



POLICE DEPARTMENT

October 29, 2007

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Michael Hamilton
Tax Registry No. 915859
75 Precinct
Disciplinary Case No. 81884/06

Police Officer Radoslaw Terepka
Tax Registry No. 926200
75 Precinct
Disciplinary Case No. 81885/06

The above-named members of the Department appeared before me on June 13 and June 20, 2007, charged with the following:

Disciplinary Case No. 81884/06

1. Said Police Officer Michael Hamilton, assigned to the 75 Precinct, while on duty, on or about August 14, 2005, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that he failed to conduct a proper investigation in regards to a radio run to wit: said Officer responded to a call for help at an address known to the Department and was unable to gain entry. The Officer requested a call back from the dispatcher and was told the phone number resulted in an answering machine. Said Officer finalized the job as unnecessary without contacting a supervisor to ascertain whether forcible entry or continued investigation was necessary.

P.G. 203-10, Page 1, Paragraph 4 – PROHIBITED CONDUCT

Disciplinary Case No. 81885/06

1. Said Police Officer Radoslaw Terepka, assigned to the 75 Precinct, while on duty, on or about August 14, 2005, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that he failed to conduct a proper investigation in regards to a radio run to wit: said Officer responded to a call for help at an address known to the Department and was unable to gain entry. The officer requested a call back from the dispatcher and was told the phone number resulted in an answering machine. Said Officer finalized the job as

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unnecessary without contacting a supervisor to ascertain whether forcible entry or continued investigation was necessary.

P.G. 203-10, Page 1, Paragraph 4 – PROHIBITED CONDUCT

The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office, and the Respondents were represented by Michael Martinez, Esq.

Each Respondent, through his counsel, entered a plea of Not Guilty to the subject charge and a stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 81884/06

Respondent Hamilton has been found Not Guilty.

Disciplinary Case No. 81885/06

Respondent Terepka has been found Not Guilty.

Introduction

It is not in dispute that on August 14, 2005, a man by the name of [REDACTED] raped and assaulted a female named [REDACTED] who was babysitting a two-year old for the tenant who occupied the apartment. Thorne used a hammer and a knife against Francis during the course of the rape and assault. It is also not in dispute that Respondent Hamilton and Respondent Terepka responded to the location on two occasions on August 14, 2005. They first responded to a "10-10" call for help. On that occasion they were unable to gain entry. They called the dispatcher requesting a callback, but the dispatcher advised them that the call went to

voicemail. It is not disputed that Respondent Hamilton, who was the recorder that evening, finalized the job in his Activity Log and with Central as a "90 U" unable to gain entrance.

Their second response to the location was for a "24" past assault. It is not in dispute that on this occasion, the Respondents advised the dispatcher to call the residence, advise the 911 caller that they had previously responded to the location and were unable to gain entry, and to provide access this time. Upon arrival the second time, Thorne opened the door and was covered in blood. They found the victim who advised them that she was attacked by Thorne. The Respondents then placed Thorne under arrest. The Respondents made two requests for an ambulance but later learned that Francis had succumb to her injuries.

After arresting Thorne, the Respondents were able to secure the weapons used in the attack of the victim as well as secure and preserve the crime scene. The sole issue before this Court is whether the Respondents engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that on their first police response to the location, they failed to conduct a proper investigation by finalizing a job as unable to gain entry and unnecessary, respectively, without contacting a supervisor to determine if forcible entry or continued investigation was warranted at the location.

EVIDENCE

Court Exhibit (CX) 1 is the Activity Log of Respondent Terepka. It is a five-page document and Respondent Terepka noted that his tour was scheduled from 10:15 p.m. on August 14, 2005 and ended at 7:50 a.m. He noted that his partner, Respondent Hamilton was the recorder. He responded to the incident location [REDACTED] at 6:36 a.m. in response to a 10-10 call. At 6:45 am, the job was finalized as a "90U" unable to gain entrance. The

Respondent then responded to the location again at 7:08 a.m. for a "24" past assault. He arrived at the location at 7:10 a.m. The assault victim, a female black, was transported to Brookdale Hospital at 7:40 a.m. It notes that she was "pronounced" [dead] at 8:00 a.m. Evidence was vouchered at the 75 Precinct under Invoice Nos. M790694, 90693 and 90695. Respondent Terepka's tour ended at 3:50 p.m.

CX 2 is the Activity Log of Respondent Hamilton. Respondent Hamilton had the same entries regarding the tour he was working, his response to the incident location on two occasions and his finalization of the initial job as 90U unable to gain entrance.

The Department's Case

Department's Exhibit (DX) 1 is the compact disc of the communications between Respondent Hamilton and the police communications technician on August 14, 2005.

DX 2A-2F are photographs of the exterior of the house where Francis was raped. They show the front of the house (DX 2A), the left side of the house which has a metal gate in an area possibly used as a driveway (DX 2B), the right side of the house which is a corner house which abuts shrubs (DX 2C), the back of the house which has what appears to be an add-on to the house with a door and window (DX 2D), and two close-up photographs of the front door and doorknob (DX 2E and 2F).

The Department called Detective Gaetano Competiello, Captain Daniel Mickulas, and Police Communications Technician Mohammed Rahman as witnesses.

Detective Gaetano Competiello

Competiello, a ten-year member of the Department, has been assigned to Internal Affairs Bureau ("IAB") Group 34, for over two years. He stated that he works on corruption and serious

misconduct investigations, and around the beginning of November 2005, he was assigned to the investigation involving the Respondents. He testified that the allegation against the Respondents was "failure to conduct a full investigation." Competiello stated that he was the second investigator on the case as the initial investigator had been reassigned.

Competiello testified that he reviewed the case and saw that the initial investigator spoke to Detective Schrammel, the detective from the 75 Precinct who interviewed the tenant on the first floor regarding the incident that occurred on August 14, 2005. The tenant stated that during the incident she had "heard noises, a little bump," but had not heard screaming. She further stated that she had not thought the noise was anything unusual, assuming that the people in the upstairs apartment were merely "getting up" with their two year-old daughter.

Competiello testified that it was determined by his Commanding Officer that charges should be brought against the Respondents for not conducting a full investigation and not calling their patrol supervisor to assess the situation. Competiello further testified that on his Commanding Officer's evaluation of the case, the Respondents should have taken down the door, that such an action was warranted given the situation. He acknowledged that he had visited, examined, and photographed [REDACTED], where the incident had taken place, that there appeared to be a back door at the location and a bell on the front door, and that based on his investigation, an individual would have been able to gain access to the back of the house.

On cross-examination, Competiello said that he took pictures of the house in December of 2005 or January of 2006, a few months after he had been assigned to the case. He agreed that he finished as the lead investigator, taking over for Sergeant Thomas Devine, who had been transferred to a different group. He acknowledged that he checked through Devine's work before continuing his own work and incorporated his predecessor's work into the final case. He

had no reason to believe any information in the case file was inaccurate. He agreed that Captain Mickulas, who was previously Captain of Group 34, decided to substantiate the charge.

Competiello acknowledged that [REDACTED] was a two-family house, with an entrance in the front which led to the second floor and an entrance in the back which led to the first floor. Competiello agreed that the entrance in the back of the house was "a little strange" and came out of the doorway. He also agreed that the house did not look like what a normal two-family house would look like. He acknowledged that the date he visited the location, there was work being done and there was scaffolding on the side of the house. He admitted that he did not know if the scaffolding was in place on the date in question, but agreed that it was possible that it was put up after the date of the incident.

Competiello agreed that he reviewed the work done by Schrammel, which consisted of a lot of police paperwork because the case was a homicide investigation. Schrammel interviewed the people that live one flight below the site of the homicide, but they told him they found nothing unusual about the noise heard around 6:30 a.m. the morning of the incident. Competiello admitted that the people were not exactly cooperative when speaking to police personnel.

Although Competiello did not speak directly to the tenants, he stated that Devine did and memorialized it in a worksheet. Competiello agreed that the tenants, a male and a female, were not identified and had not wanted to speak to the police. He acknowledged that the tenants said they had seen the police respond to the house on the date of the murder and had seen the responding officers get out of their car and walk to the front of the house.

Competiello acknowledged that on August 14, 2005, a man named [REDACTED] raped and killed a babysitter in the presence of a child at [REDACTED]. He also acknowledged

that Thorne confessed to the crime, but admitted that he did not know the status of the case.

Competiello agreed that the District Attorney's Office never cited any wrongdoing on the part of the Respondents. He also agreed that he was given the case because it was later determined that the Respondents had initially responded to the location where the rape and murder had occurred; had closed the job as unable to gain access, and had later been called back to the location. He stated that as part of the investigation, he had wanted to see exactly what actions the Respondents had taken. He acknowledged that Mickulas determined that they should have called a "boss" to the scene to investigate further.

Competiello estimated that there were approximately three other investigators working on his team at the time, with about 11 individuals in total working in Group 34 under Mickulas. He stated that only he and the previous investigator were familiar with the facts of the case, and that Mickulas made the final decision as to whether or not misconduct had been committed. Competiello admitted that based on his investigation, he did not think that the Respondents had committed misconduct as specified in the Charges and Specifications. He further admitted that he did not think the Respondents had done anything wrong. He acknowledged that there was a "give-and-take" between him and his supervisor in the IAB group, but asserted that there was no conferral and Mickulas decided that charges would be preferred because the Respondents should have called a patrol supervisor. He stated that Mickulas essentially reviewed the case and came up with his own decision. Competiello admitted that there never was a point when he made a recommendation that there was no misconduct committed in the case.

Competiello agreed that the Patrol Guide of nearly 600 pages is not shy in saying what an officer must do in certain situations. He further agreed that officers are responsible for everything in the Patrol Guide as well as the Penal Law. He acknowledged that the Police

Department is constantly enhancing the Patrol Guide, and that if an issue arose that the Police Department felt must be addressed formally, it would issue Interim Orders, to let the police officers know about them, and later include the issue in the Patrol Guide. He agreed that it has specified certain situations in which a patrol officer must call a supervisor to a scene. He acknowledged that procedures can be created at the command level. Competiello admitted that a commanding officer or executive officer can address a certain situation at Roll Call or place a memo in the precinct, and agreed that likewise an officer can place a note in everyone's mailbox or on a board, or address the issue at Roll Call. He agreed that officers are responsible for what goes on in their precinct. Based on his knowledge, he admitted that there was nothing in the Patrol Guide that said officers must notify a sergeant given the exact circumstances of this case, a 10-10 call for help where they were unable to gain entry.

Although Competiello acknowledged that he has never worked in the 75 Precinct, he agreed that he was familiar with the precinct, that it was one of the busier precincts in the city, and that the officers respond to a lot of jobs. In the course of his investigation, he estimated that, on average, officers in the 75 Precinct are assigned three "10-10 calls for help" ["10-10 call"] in a given tour, depending on the tour and the hour. He stated that a 10-10 call "could be anything," and agreed that it did not rise to the level of the major incidents like assault, robbery, or rape, in which a supervisor automatically must respond when the call goes over the radio. He acknowledged that a 10-10 call is a low-priority job assigned to a police officer, but above a 311 call. He estimated that over 80 percent of 10-10 calls to the 75 Precinct are finalized as 10-90X, unnecessary.¹

¹ Competiello incorrectly identified a 10-90X to be "unnecessary." According to the Radio Code Signals Insert, a 10-90X signifies "unfounded" while 10-90Y signifies "unnecessary."

He acknowledged that although he personally had not interviewed Sergeant Resseque, the patrol supervisor on the date of the incident, someone on his team had. He further acknowledged that Resseque was asked about what occurred on the day of the incident. Competiello stated that although he reviewed the questioning of Resseque, it was only a summary, and according to the summary, Resseque's opinion was not asked as to whether or not, as the patrol supervisor, he thought the Respondents should have called him to the scene.

Competiello acknowledged that during the investigation into the case, he learned how calls were routed. The initial call from the victim went to a 911 operator at Metro Tech; the 911 operator entered a code that was given over to the dispatcher, and the dispatcher then "raised" or contacted the units that would respond to the call. He admitted that during his investigation, he heard the 911 call made by the person who became the decedent. He stated that "she said, 'Help me,' and that was it" to his recollection, but agreed that she also gave an address. He stated that it was a very low female voice. He admitted that the last time he heard the tape of the 911 call in his investigation was November of 2005. His opinion was that in the first half, when the woman asked for help, she did not sound like she was in distress, but in the second half, when she gave her address, she sounded like she was in distress. He admitted that he does not know the identity of the initial 911 operator, and acknowledged that the investigation, by his predecessor and by himself, never reached out and spoke to the woman who actually took the direct call and put it into the computer as a 10-10 call for help. He said that he could not determine whether or not he thought it was the appropriate way to route the call because he did not know the procedures of 911 operators.

Competiello stated that he worked patrol in the Transit Bureau for about six and a half years. He agreed that, at times, 911 calls were turned into jobs assigned to him. He also agreed

that as a patrol officer, the most important thing was to have the proper information so one may respond accordingly. He agreed that if he were assigned that job, the knowledge that the woman sounded like she was in distress and was abruptly cut off would have changed the way he would handle such a job. He admitted that there was no disciplinary action taken at any point against the person who took the initial call nor was there any focus in the investigation on her. He stated that when he received the case, he reviewed the initial investigation of the case and continued onward from the interviewing of the Respondents. He agreed that he interviewed the Respondents again and they gave the same statement twice. He admitted that in retrospect, the 911 operator who routed the job could have put more emphasis on the job itself. He agreed that the operator could have added that the woman seemed to be in distress or in pain, that there was a way to give that information to the officers as well.

Competiello acknowledged that Police Communications Technician Mohammed Rahman, the dispatcher, received the call from the initial 911 operator. He agreed that Rahman had been given the call by computer code as a 10-10 call with an address and had simply conveyed that to the Respondents. Based on the investigation, Competiello acknowledged that the Respondents had taken a few minutes to get to [REDACTED]. He further acknowledged that once at the location, they had looked around the house, rung the doorbell, knocked on the door, and listened. He agreed that the Respondents had not heard anything. He also agreed that the Respondents told him they had taken those steps and he has no reason to doubt that testimony.

Competiello admitted that based on the statement given to homicide detectives during the murder suspect's confession, he had seen the Respondents approach the house, stayed quiet, and had not answered the door. Competiello estimated that the Respondents remained on the scene

approximately a minute and a half during their first response. When asked if the Respondents spent closer to ten minutes on the scene, he said that he would have to look, but he did not believe so. He acknowledged that at some point, the Respondents called back to Central while they were at the scene and asked for a "callback." He stated that Rahman dialed the callback number and it went to an answering machine. He agreed that when Rahman went back over the radio to tell the Respondents, he said the call had gone back to voicemail, not an answering machine.

He acknowledged that shortly after the callback, the Respondents gave the job back as a 90U, unable to gain entrance and left. Competiello further acknowledged that from his investigation, he determined that the murder suspect looked at his caller identification ("ID") to see who had just called and actually dialed that number. He agreed that the murder suspect probably wanted to know who was calling the house after he had just wounded someone and dialed that number. He said that the murder suspect reached Rahman on his landline, the phone Rahman used to make calls. He agreed that the landline was not where Rahman received calls routed to him. He acknowledged that Rahman was busy handling a lot of calls when all of a sudden the murder suspect called him and asked if he had just called. He further acknowledged that there was a little discussion where Rahman asked the identity of the caller, the murder suspect asked Rahman's identity, Rahman asked the murder suspect if he needed police assistance, and the murder suspect said "No." Competiello said that Rahman did not do anything with that information. He added that if Rahman had realized that the individual who called back had the telephone number that he had initially called, he could have notified the officers who had responded to the scene. He agreed that had the Respondents had all the information that was available to the dispatcher and the 911 operator, they would have known that there was a female

caller who sounded like she was in distress, an abrupt hang-up, and after the callback which nobody answered, a male called back the 911 dispatcher and said there was no need for police. He agreed that that information would have been useful to the Respondents who had responded to the scene. He further agreed that because the initial 911 operator and Rahman did not do all that they could have, that information was not given to the Respondents.

He acknowledged that the murder suspect, in an effort not to get caught, later actually called 911 himself, saying that he needed help, that an hour earlier his girlfriend had been assaulted and he had been injured, too. Competiello admitted that he did not believe the murder suspect was injured, but agreed that he had blood on him. He agreed that he had heard the tape of the murder suspect calling 911 in which he casually said they needed a unit because his girlfriend was hurt, but did not say she was badly hurt. He acknowledged that the Respondents were assigned that job of a past assault.

Competiello agreed that when they were given that second job assignment, the first thing Respondent Hamilton told the dispatcher was to make sure the individuals were at the house, as he and his partner had just come from there and nobody was answering the door. He further agreed that Respondent Hamilton told the dispatcher that their call had been for a woman and she would not answer the door. He acknowledged that another dispatcher, not Rahman, called the murder suspect back and told him to make sure he opened the door for the police as they were on their way.

Competiello said that as soon as the Respondents arrived, the murder suspect opened the door and they noticed that he had blood on him. He admitted that the murder suspect knew it was the second time they had responded. He added that the Respondents handcuffed him and when they entered the house, they saw the victim, who was able to say that the murder suspect

had attacked her, lying on the bed. Competiello acknowledged that the suspect raped and stabbed the victim, which ultimately led to her death. He further acknowledged that a statement was given to the District Attorney's Office and the case was prosecuted. He agreed that an arrest was made that night and the victim identified the man that the Respondents had placed in handcuffs. He further agreed that at that point, the Respondents called a sergeant to the scene.

Competiello acknowledged that the Respondents put it over the radio that a woman needed assistance and that there was a 20-minute delay before the ambulance arrived. He further acknowledged that there was a lot of confusion as to why the ambulance was taking so long, and the Respondents ordered a second ambulance for the child aged two or three who was also in the house. Competiello agreed that the Respondents handled the job appropriately and professionally once they were inside. He further agreed that Resseque, the sergeant who responded to the location, went over the radio as a supervisor and requested that an ambulance respond quickly. He acknowledged that they were worried about the woman, who continued to get worse while they were waiting and eventually expired.

Competiello acknowledged that neither the Patrol Guide nor the 75 Precinct had any orders, regulations, or policies of any kind to address this situation. He explained that there was no policy that police officers needed to call a supervisor to the scene when they had a 10-10 call and were unable to gain entry. He further explained that he did not have a conversation with any supervisor which resulted in the supervisor officially saying he or she expected to be called to the scene in this situation. He agreed that there were approximately eight units on the midnight tour at the 75 Precinct, with each unit receiving approximately three 10-10, low-priority jobs per tour. He agreed that none of the units were required to call a supervisor simply because the officers could not gain access. He admitted that since his group decided to serve charges on the

Respondents for not calling a supervisor to the scene, there have been no changes in Department policy, nor was it codified in the Patrol Guide, Interim Orders, or even informally at the 75 Precinct that officers must call a supervisor to the scene, given these same facts.

Competiello agreed that officers must conduct themselves on patrol in such a way as not to violate the Penal Law. He acknowledged that he investigates all types of police misconduct and is aware of cases where officers improperly take down a door, although he has never investigated such a case. He further acknowledged that officers have guidelines to follow when confronted with the issue of going into an individual's home, and are usually not allowed to do so. He agreed that for an officer to break into a home there had better be "blood-curdling screams and blood spattered on the window," and even then they would have to call for the Emergency Services Unit. He acknowledged that according to the Patrol Guide, officers do not take down a door to get into an apartment. He further acknowledged that the officers themselves could be disciplined for doing so not only by IAB but also by the District Attorneys' Offices, and may possibly be arrested. He agreed the Respondents did not have a basis to take down the door given the facts and information they had while at the location the first time in this matter.

Competiello admitted that initially Rahman was issued a Command Discipline ("CD"), written up by Devine, for not conducting a proper investigation. He agreed that the feeling was that Rahman should have done more to investigate the call that came to him from the murder suspect. He admitted that he did not know whether the CD was actually adjudicated as he was not part of the team that investigated civilians.

He agreed that after viewing the location, it looked like a one-family house. He further agreed that the door in the back looked like the door to a shed. He acknowledged that in one of his worksheets he said that the house looked like a one-family house from the outside and a

person would reasonably believe that it was a one-family house. He further acknowledged that the door in the front where the Respondents were ringing the bell and banging led to the second floor where the actual murder took place.

On questioning by the Court, Competiello acknowledged that he thought the entrance to the one-family house would have been through the front. He admitted that even before he took the photographs, he knew it was a two-family house, but he went to see if it looked like a two-family or a one-family house, and it appeared to him to be a one-family house, even though he knew otherwise. After review of his reports, Competiello testified that based on his interviews with the Respondents, they spent approximately seven minutes at the location on their first visit. He said that the victim was 21 years of age and the child was two years old. Competiello admitted that the method used to kill the victim was a hammer.

On further cross-examination, Competiello acknowledged that the Respondents recovered and safeguarded the hammer that was the murder weapon. He said that he used the sprint report to determine the seven minutes the Respondents had spent on the scene. He also said that he had access to the Respondents' Activity Logs from that day, which have them at the scene for close to ten minutes. He agreed that the Activity Logs were filled out before there was an allegation against the Respondents. He further agreed that the Respondents were not notified that night that they had done anything wrong. He acknowledged that the Department never charged the Respondents with false entries on that day for overestimating how long they were on the scene, and there was no reason to believe that what was in the Activity Logs was wrong. He agreed that the SPRINT report indicated when the Respondents went on the radio, not when they arrived on the scene.

Captain Daniel Mickulas

Mickulas, a 21-year member of the Department, is currently the Commanding Officer of the Intelligence Section in IAB. Prior thereto, he was the Commanding Officer of IAB Group 34. He stated that as Commanding Officer of Group 34, he essentially dictated how the cases would go from initial investigation until subsequent closing. He explained that in IAB, cases are generated in various ways, such as a letter or a telephone call to the command center, their main information hub. Information is sent to a group as either a callout or a case. Callouts are initial tentative investigations to determine whether further investigation should be conducted, who should conduct it, and to whom it should be referred. He testified that his investigators would go out and do the initial investigation, such as interview any available witnesses and obtain pertinent paperwork, Department records, or video, depending on the nature of the allegation. From that point, a duty captain and/or a chief would make a determination as to where and how the investigation would progress. He stated that a case could become a corruption ("C") case, which is the majority of the cases investigated by IAB; a misconduct ("M") case, which could be investigated by IAB, an Investigations Unit, and occasionally a precinct Integrity Control Officer; or an organization guide investigation ("OG"), which could also be investigated by IAB, an Investigations Unit, or an Integrity Control Officer.

Mickulas testified that the case involving the Respondents was classified as an "OG" case. He stated that from what he recalled, a callout was generated to his group, Group 34, in August of 2005. His investigators responded and obtained information from the command. Based on the initial information they received, he initially recommended to his group that it be an "M" case. It was reduced to an "OG" case and sent back to his group. He testified that "C" cases are the most severe in nature, depending on the nature of the allegation. He further

testified that "M" cases indicate that there may or may not be misconduct and the allegation needs investigation. In this case, he believed the Deputy Commissioner of Public Information ("DCPI") received information that there had been a delay. He stated that a homicide occurred at [REDACTED] where an arrest was made and records, specifically sprint records, indicated that the Respondents had responded to that same location approximately a half hour before the actual homicide was discovered. He said that the investigation was generated to clarify why the homicide was not discovered a half hour earlier, because it was their understanding that when the victim was found, she was still alive. He stated that he believed the young female victim was raped and brutally beaten with a hammer and died at Brookdale Hospital a short time after from her injuries.

Mickulas testified that during this case, he was aware of the majority of the steps taken. He further testified that as the Commanding Officer, he was ultimately responsible for all the investigations that occurred in his unit. He took certain steps himself—something that he normally does with all of his investigations—and prepared worksheets, as indicated in the case folder. He said that as the investigation continued, he would routinely confer with both the investigator and the team leader, normally a lieutenant in the group who supervises his team's investigations. He said that after conferring with those individuals and based on the information obtained, he would determine what the case disposition should be, be it unsubstantiated, unfounded, exonerated, partially substantiated, or substantiated, and any disciplinary action that would have to be taken.

Mickulas said that in this case, the group had obtained the Roll Calls and most of what were considered the attachments in the case folder: copies of the 911 calls, copies of the radio transmissions—which were important in this case—and background information on the

Respondents. He stated that his investigators went to the scene of the crime and took photographs of the incident location.

Mickulas stated that after review of the case, he determined that when the Respondents had initially responded to the first 10-10 call for help, based on the answers they had provided at their Official Department Interviews and the information the group had obtained, the Respondents should have conducted "a little bit more thorough" of an investigation as far as the incident went. He said that they had what ended up as a homicide where the woman had called 911 requesting help. He stated that the Respondents showed up at the scene and did not approach the first-floor tenants. He does not believe that the Respondents thoroughly canvassed around the building. He said that although the Respondents had been advised that the incident was on the second floor, there was no indication that the Respondents had done anything other than arrive at the scene and knock on the door. Mickulas believed that at the very least, from his experience, they should have called a patrol supervisor to the scene to further assess the situation. He asserted that that response, along with certain other steps the Respondents could have taken, could have possibly led to their arriving or gaining entry prior to the second call.

Mickulas believed the Respondents were toward the end of their tour when they received the call. He testified that when the information was obtained, he personally reviewed all of the tapes that were involved with this case. Mickulas stated that the first 911 call was very brief and from a female victim. He noted that she did state the location, but said that there was no further information that could have been gleaned from the tape. He also stated that there was no information as to what he believed to be misconduct by the Respondents regarding the telephone discussion with the killer.

According to the radio transmission tapes (DX 1), the dispatcher had mentioned to the Respondents upon assignment that the incident was a call for help on the second floor of the location, which Mickulas added pinpointed the location a bit more. He said that there was an Automatic Number Identification and Automatic Location Identification ("ANI/ALI"), which identifies the location from which a 911 call is generated. He stated that in this case, the ANI/ALI provided the address from which the call was generated as well as the name of the registered owner of the phone. He said that according to the radio transmissions, the Respondents did not ask where the ANI/ALI had come back, but did request a callback from the dispatcher. He testified that the dispatcher dialed the number that was listed on the SPRINT printout and reached an answering machine. He further testified that there was no answer nor did the dispatcher speak with any individuals. He stated that if the Respondents had asked for the ANI/ALI, it would have told them that the call had emanated from the second floor, which he felt was pertinent information. He stated that if the Respondents had asked, they would have known that the call was generated from inside that residence, which itself was not large, but two stories and detached.

Mickulas testified that listening to the tapes he could not fully determine if the officers had marked the job as 10-90Y, unnecessary, or 10-90U, unable to gain entrance. He said that one of the Respondent's Activity Log indicates 90U, unable to gain entrance. He stated that the SPRINT printout had the Respondents marking the job as 10-90Y, unnecessary. He said that it was not clear on the tape and he could not determine what the final disposition of the original job had been. He testified that in his experience, a 90Y occurs when one arrives at a job and determines that it is unnecessary, that one discovers information that there was no need for the call or there was no need for the police to respond to the location as there was no crime. He

stated that 90U is unable to gain entry, meaning an individual approached the location and was not able to get in.

He said that Competiello conducted the investigation for the most part. He testified that as the investigator, Competiello had input into the investigation as far as steps went, but he did not make the final decision because he was a detective and as such he did not take disciplinary action against officers. He stated that Competiello did not write CDs or charges and was not a higher-ranking officer. Mickulas testified that he determined any disciplinary action that was taken and any dispositions of cases in his group. He further testified that he made the final determination, which was a recommendation that Charges and Specifications be issued. He stated that he determined that the Respondents had conducted an incomplete investigation. He said that the charges were drawn up and he fully agreed with and signed off on them. He testified that after charges were prepared, they were returned to his office for review. He further testified that in this case, he reviewed the charges and resubmitted them.

On cross-examination, Mickulas agreed that he has supervised a large volume of work in his career at IAB. He estimated that his group was assigned approximately 280 to 300 direct cases, not including callouts and the cases he investigated as an Internal Affairs Duty Captain. He acknowledged that he was involved in what his team was investigating, that he was not the kind of captain to "sit back" and let the team do the whole thing, but was there for guidance. Mickulas admitted that he trusted and relied on the workers that were in his group and that Competiello did not decide who got charges because he was a detective. He stated that even the sergeants in his group did not make the ultimate determination. He admitted that the majority of his investigators were sergeants but he also had detectives such as Competiello. He further

admitted that he personally had been the one to sign off on all CDs and charges in cases assigned to his group where disciplinary action had been taken.

Mickulas acknowledged that sergeants and above may be drafted into IAB through promotion, but detectives volunteer. He agreed that there was no reason to believe that Competiello was less than enthusiastic about working in IAB. He said that Competiello was a good investigator. He said that the original investigator on the case was Devine, who had been transferred, and the case had thereafter been transferred to Competiello. He acknowledged that he maintained a strong oversight over the investigation, and agreed that he personally prepared a number of the worksheets in the investigative file. He believed that he had recommended this case as an "M" case. He stated that as an "OG" case, it was lower than an "M" case. He noted that nothing was below an "OG" case.

Mickulas acknowledged that he reviewed everything in the case folder, everything that was available to IAB. He agreed that although he was there to investigate police misconduct, if any other misconduct had been noted during the investigation, he would have taken action. He said that for the most part his group investigated police misconduct. He stated that he had found misconduct by Rahman and issued him a Schedule A Command Discipline. He agreed that the case was submitted to him for closing, but he sent it back for further investigation and knew that discipline was taken against Rahman later in the case. Mickulas acknowledged that it was possible that the case was initially presented to him for closing without discipline recommended for Rahman. He admitted that when his investigators came to him with what they had found, he tried to push them to look more at the totality of the circumstances. He agreed that Rahman was not beyond the reach of his investigation because of his civilian status and he was well within his power to issue discipline to Rahman.

Mickulas admitted that during the investigation, they determined that the killer had called back the dispatcher directly, which is an unusual act and not the same as calling 911. He acknowledged that the killer had the telephone number through either caller ID or *69. He said that the killer did not provide his name or address, but essentially stated that there was nothing going on. He agreed that the killer called the telephone number, received Rahman's landline and asked him if he had just called. He acknowledged that Rahman and the killer had had a brief conversation. Mickulas admitted that Rahman should have questioned why a call was coming directly to his line, and should have requested the caller's name, address, and purpose for calling. He agreed that Rahman had been interviewed as well, but does not recall what his exact responses had been. He did not believe Rahman made the connection between the call that came in to him and the number he had just called. He agreed that had Rahman made the connection, he could have relayed the information to the Respondents, which would have assisted them. He admitted that officers were provided with information from the radio. He added that their responses and all that followed would elicit further information that the radio would not provide. Mickulas noted that the Respondents should have asked about the ANI/ALI, but he also agreed that Rahman could have provided that information.

Mickulas admitted that he wanted to be as thorough as possible in the investigation. He said that when he reviewed the 911 tape, it said, "Help me, please, [REDACTED]," and then the call was terminated. He stated that an interview of the 911 operator would not have provided anything further for his investigation as far as the information he was looking into because, from his experience, 911 puts the information into the computer and forwards it to Communications without speaking directly to the police communications technician.

Mickulas agreed that the call had first come over as a 10-10. He did not want to rate a 10-10 in terms of priority, but said that in this case it was a high priority. He acknowledged that below 10-10s are 311 calls and quality of life calls, such as blocked driveways. He admitted that a 10-10 call is more of an unknown job assignment, and agreed that it could be anything. He stated that when officers in the field receive a 10-10 call, they are only given information by the dispatcher.

Mickulas agreed that the Police Department has certain situations where sergeants have to respond. He does not believe supervisors automatically respond to 10-10 calls for help. He agreed that he is very familiar with the Patrol Guide. He further agreed that the Police Department is not shy about telling its personnel how and when they have to act in certain situations, and that the Patrol Guide consists of over 500 pages in which the Department dictates what police officers must do in those situations. Mickulas admitted that when the Department determines that things can be improved through efficiency, it issues Interim Orders. He agreed that at the precinct level, if there is a condition that a commanding officer or an executive officer thinks must be addressed, the commanding officer will address it at Roll Call. Mickulas agreed that officers are responsible for all information.

Mickulas estimated that he has conducted 50 Official Department Interviews where officers have stated that they were unaware a specific rule was listed in the Patrol Guide. Mickulas agreed that in the past, for example, officers were not required to inform their supervisors if they visited a correctional facility. He further agreed that at some point, the Department decided to change that and created an Interim Order stating that officers were required to notify their supervisors in such situations and it is now a procedure. He acknowledged that it is not a viable defense for an officer to claim he never received a specific

order because lack of knowledge of a specific published directive is not an excuse. Mickulas agreed that ignorance of the law is not an excuse either. He said that he would not have accepted the excuse that a person had not received an Interim Order during an Official Department Interview. He agreed that officers are held responsible for the orders that the Department produces even if they are out sick long-term and have not been in a Roll Call or police facility.

Mickulas admitted that the Respondents were charged with conduct prejudicial to the good order and efficiency. He further agreed that the charge was appropriate even though there was not a specific procedure in the Patrol Guide that addressed what he believed to be misconduct on the part of the Respondents. He acknowledged that he looked through the Patrol Guide and always wanted to charge subject officers with the most specific misconduct he could find. He agreed that he had rejected charges so that they could be redrafted with the actual misconduct reflected specifically in the charge. Mickulas further agreed that charges are drawn up so that it may be clear to the officers what they must defend themselves against. He admitted that he wanted to include in a charge specifically what he thought the officers had done wrong and what law or rule they had violated.

Mickulas said that there was no order that specifically covered this situation, but there was a general order against "conduct prejudicial to the good order, efficiency, and discipline of the Department." He stated that he did not believe that since the Respondents have been charged, there has been a suitable order added to the Patrol Guide, an Interim Order, or any other kind of rule. He stated that there is no specific procedure in the Patrol Guide that focuses strictly on 10-10 calls, which are lower priority in comparison to other calls that may come in. He admitted that the Police Department has codified in the Patrol Guide specific times when a sergeant must be called to the scene. Mickulas agreed that in such a situation, even if it is not

initially put over the radio, the responding officers must call a sergeant, even though patrol sergeants listen to the radio, presumably would have heard the same call, and are instructed to respond. He further agreed that even though sergeants have the responsibility to respond, the responding officers should make sure the sergeant is responding. He acknowledged that if the officers fail to do so, disciplinary action may be taken and they could be charged with misconduct, an "M" case.

Mickulas admitted that the Patrol Guide constantly changes to include more incidents in which a sergeant must respond. He stated that if there had been a specific procedure in which a sergeant must be called to the scene on a 10-10 call for where the officers cannot gain access, the Respondents would have been charged with failing to perform that procedure. He agreed that when he substantiated this case, he used his experience as a sergeant in the 112 Precinct to determine that the Respondents should have called a supervisor to the scene. He acknowledged that when he was a sergeant he did not specifically direct his officers to call him on a 10-10 in which they could not gain entry. Mickulas agreed that he looked to past cases to determine how to proceed with present ones, and that there were no other cases with facts specific to this one, asserting that in substantiating the specific charges written against the Respondents, he was breaking new ground. He noted that it was an unusual situation.

He stated that if he encountered this situation frequently, he would recommend that a procedure be drawn up. He further stated that the nature of his job is varied and a procedure will not be drawn up to outline and detail every specific incident and how one is supposed to respond to every type of job. He agreed that a 10-10 call is routine in the Police Department. He said he believed that the Respondents had estimated in their Official Department Interviews that they received between three and five 10-10 calls on a weekend per sector per tour. He stated that on

the date of the incident the Respondents had gone to prior 10-10s and had about five 10-10s in total.

Mickulas agreed that the victim sounded like a woman in pain on the initial 911 call tape. He also agreed that the call ended abruptly. He said that he did not know if the initial 911 operator should have given a better designation than a "10-10" call for help. He admitted that the 10-10 designation accurately depicted what was said in the short duration of the call. He agreed that some of the victim's last words were on that tape. He stated that if he had taken that call, he would have directed officers over the radio to go check the location and see what was there.

Mickulas acknowledged that a 911 operator takes the job and types it in, a Communications dispatcher, dispatches the job to the officers, and the officers take the job and are directed to respond to the scene and conduct the initial investigation. Mickulas determined that the Respondents should have gone further with their actions. He said that he would not have added any importance to the initial 911 call and based on what he knows, he does not think the initial 911 operator did anything wrong whatsoever. He admitted that as an officer in the field, he would want every piece of information available. He stated that the 911 operator could have been more descriptive, but the Respondents could also have checked the rear of the house.

Mickulas agreed that Competiello, a member of the service working at LAB, went to the house and provided a worksheet in which he said to the naked eye it would be reasonable to think the house was a one-family house even though it was known to be a two-family house. He agreed that Competiello said the door in the back looked like it belonged to a shed. He further agreed that Competiello went to look at the house, but stated that he himself had not gone to the house. He acknowledged that the door in the front of the house which the Respondents were

knocking on led to the second floor; that the Respondents were knocking on the right door, but nobody answered. He believed that the killer stated that he looked out the window and saw the cops, but did not respond.

Mickulas admitted that no one spoke with the first-floor tenants until later. He further admitted that they were reluctant when they spoke with police. He believed they provided a statement to the 75 Precinct detectives, documented on a Complaint Follow-Up memorializing that they did not want to give a taped statement to any investigators, but saw the officers get out of their car and look around and perhaps heard a bump at 6:30 a.m., but thought it was probably the people upstairs waking up with their child. He agreed that the first-floor tenants said they heard nothing along the lines of a murder or assault being committed. He stated that the Respondents should have investigated the incident further.

Mickulas admitted that the Respondents should not have knocked down the door. He said it would have been a supervisor's determination, unless of course the Respondents had heard something that was of such magnitude that it warranted their taking down of the door. He said that taking down the door might have gotten more people involved, including an Emergency Services Unit. Mickulas acknowledged that he had had cases where officers and even the Warrant Squad had improperly taken down doors. He agreed that officers are told not to take down a door unless they are certain about what is happening. He stated that the end would not justify the means if an officer took down a door and stopped a murder regardless of whether or not he or she had sufficient information to do so. He said that if an officer knocked down a door improperly and was sued but articulated why he or she went in and had enough reason, he or she would be indemnified. Mickulas stated that each situation for taking down a door is different.

He explained that an officer would not be indemnified if he or she were in the wrong neighborhood completely.

Mickulas agreed that officers must obey the Patrol Guide as well as the law. He agreed that officers have to follow the same laws as civilians. He further agreed that there have been cases where officers were indicted or arrested, and that his office handles those cases. He acknowledged that the Police Department gives rights and responsibilities according to rank, and sergeants, lieutenants, and captains may have different responsibilities than police officers. He does not believe that the law distinguishes what officers or sergeants can and cannot do by rank. He stated that a sergeant, upon responding to a scene, can make a determination to go into a location; he said that something might happen if a sergeant is wrong in his decision. He denied that a person's rank comes into consideration when evaluating whether criminal conduct has taken place. He agreed that the Respondents had a patrol sergeant who was interviewed, but did not recall Resseque being asked at any point if he thought the Respondents should have called him to the scene. He did not believe they asked Resseque his opinion regarding the actions of the Respondents.

Mickulas said that the information in this case was received by the Department from DCPI. He said his group looked into how the Respondents had been to the apartment before the discovery of the murder. He stated that he did not have many cases forwarded to him from DCPI. He agreed that for the most part, DCPI had told them to investigate how a murder had taken place when police officers had been there earlier. He stated that the subsequent investigation had nothing to do with DCPI.

Mickulas agreed that when cases were investigated by his group, at some point a conference was held with the Department Advocate's Office. He further agreed that the

investigating officers or he would sit with an advocate and talk to him or her to determine if charges were warranted. Mickulas acknowledged that the advocate drew up the charges and returned them to him for review. He stated that during the first conference, the case investigator—in this case Competiello—would meet with the advocate. He believed that at first they were determining whether the charges should be unsubstantiated. He agreed that at some point the case was going to be unsubstantiated, but it was sent back for further investigation. He brought in the Respondents again for questioning. He admitted that someone from his office met with the advocate, he or she drew up the charges, the charges came back to him for his approval, and he signed off on them.

He agreed that the charges state the Respondents finalized the job as unnecessary without contacting the supervisor to ascertain whether forcible entry or further investigation was needed. Mickulas said that he used the sprint printout to determine how the job had been finalized. He stated that while one Respondent's Activity Log noted "90U," he could not determine that the other Respondent's Activity Log also noted "90U." He stated that in the review of the radio transmission, one of the Respondents is heard to say unnecessary. He admitted that it was possible that on the radio run the Respondents said they could not get in. He agreed that when the Respondents were called to the location the second time they told the dispatcher that they had just been to that location and had not been able to get in. Mickulas stated that he was not able to fully determine whether the Respondents deemed the first job unnecessary or unable to gain entrance, but the charge said the job was designated as unnecessary because he went by the established records. He stated that he did not charge the Respondents with providing the wrong disposition as far as incomplete or improper Activity Log entries. He admitted that he had not determined that their finalization of the job was, in fact, completely improper. He stated that the

Respondents were at the location and marked it as "90 Yellow" which they said on radio transmission, which would be deemed correct over an administrative error in an Activity Log. Mickulas said that based on what had been discussed in the cross-examination, he might leave the designation as unnecessary in the charge after the conference with the Department Advocate's Office regarding proper wording, but he might also add the fact that there was a discrepancy between the Activity Logs and the radio transmissions, which would be an added Specification.

Mickulas acknowledged that the charge was accurate and the misconduct was for not conducting a complete investigation. When asked whether the finalization of the job as unnecessary as included in the charge had to be one hundred percent correct, he stated that the job was finalized as unnecessary on the radio. He believed one of the Respondents said unnecessary in the radio transmission, which he felt was sufficient for the purposes of the charges. He stated that he charged both Respondents together because they are a radio partner team, were both there together, and neither one of them called for the sergeant, even though he agreed one of the Respondents clearly marked in his Activity Log that it was a "90U," unable to gain entrance. When asked if there had been allegations made against the Respondents when they filled out their Activity Logs, he stated that he does not know when the Respondents became aware of an investigation.

Mickulas admitted that he did not know if DCPI had spoken with the Respondents at the command while they were processing the arrest, but agreed that they probably would not have called the Respondents directly. He further agreed that the reason they were there was because "someone ended up dead." He said that he assumed there was a substantial number of 10-10 calls on any given tour throughout the city. He said that many of the calls end up

unsubstantiated, unfounded, closed, or unnecessary, but said he would have to see the hard statistics provided by the Department before he agreed that over 80 percent of the 10-10 calls turn out to be nothing. He said that they looked into this case because there was an allegation made and a possibility of misconduct. He admitted that IAB does not review every radio run and every officer's response, and agreed that this was the first time he had had to look into a case of this type.

Mickulas acknowledged that there was no charge that the Respondents' actions led to the victim's death or that they did not provide aid. He agreed that the woman was mortally wounded when she made the 911 call and subsequently died. He did not recall the ambulance delay or Resseque's attempts to rush it. He stated that the killer who beat the woman to death was arrested. Mickulas agreed that the Respondents received a dying declaration from the deceased that was instrumental in the conviction of the killer. He acknowledged that there was no allegation from the District Attorney's Office that the Respondents did less than a stellar job on this case. He stated that he did not believe he spoke with anyone in the Respondents' command about their opinions as to whether or not they thought the Respondents handled the job correctly.

Mickulas agreed that it was not an "open-and-shut case." He further agreed that he did not know a prior case that was specific in nature to the case at hand, but denied that the case was border line. He stated that he determined that charges were appropriate. He stated that borderline cases could possibly be unsubstantiated, but in this case, he determined that the Respondents' actions warranted charges. He said the case involved detailed steps. He agreed that he had people in his office upon whose good judgment, opinion, and investigative skills he relied. Mickulas agreed that he asked Competiello about his opinion and believed that Competiello was not sure the Respondents had committed misconduct. He said that he did not

remember specifically speaking with anyone else about the matter, but agreed it was possible he spoke with other people who agreed with Competiello. He agreed that he chose to overrule anyone who thought the Respondents had not done anything wrong. He stated that the case was reviewed and his superiors concurred with it.

Mickulas stated that he believed the Respondents should have done a more thorough investigation and called the sergeant to the scene. He stated that he did not know how long the Respondents actually remained on the scene because he was not there. He said that the Respondents should have knocked on the rear door. Although Competiello said the door appeared to be a shed, Mickulas stated that it was still a door and an access way into a residence. He further stated that if the Respondents had knocked on the rear door and spoken with the first-floor tenants and had they said that they had not heard anything, at least the Respondents would have obtained information that there were people who resided upstairs and could have gone with that information. He admitted that when one takes in the totality of the circumstances, the Respondents just walked up, rang the bell, waited, and left. He does not think that the killer, after bludgeoning a woman, would have said, "Yes, come in and get me," but agreed that he does not know. He believed that the Respondents could have done more, and that was what the charge reflected. When questioned whether in any situation where police action was taken, the officers could have done more; he stated that it depended on the situation.

Mickulas said that between them, the Respondents have 15 years of experience on patrol. He said that the Respondents have made arrests in their careers, and have conducted what he believed to be short-term investigations while doing patrol in the 75 Precinct. He stated that in this case, he did not think walking up to a door and ringing a bell fulfilled their obligations as police officers to respond to a 911 call.

Mickulas agreed that asking for a callback and waiting and listening to hear if anything was going on were sound steps. He stated that the Respondents had not asked for the ANI/ALI for the location, gone around the rear of the location, knocked on any other doors and windows, or looked for information when they should have called a supervisor to the scene. He acknowledged that the Patrol Guide does not list those specific steps for each type of radio run, but stated that it directs officers to show up at the scene and determine the nature of the incident. He further stated that things that are not specifically designated in the Patrol Guide are not necessarily discretionary. For example, he said that though it does not say what to do on a 10-30,² when an officer finds a victim, that officer is required to interview the victim to get a description. Mickulas stated that in this case the Respondents should have checked out the location in a more reasonable fashion. He said that he does not think that the result would have been different, but thinks that if the killer had not called back, the victim may never have been found. He admitted that on their first job, the Respondents were there, at the location where the woman subsequently died, and their actions at that time could have been better.

On redirect examination, Mickulas stated that looking at the photograph of the back of the house, he did not believe the door was a shed and would have had the detective adjust his worksheet. He testified that he reviewed cases that came to IAB on a regular basis. He said that prior to closing, cases came to him for review, were forwarded on to the borough for further review, and then on to a zone for additional review. He explained that the Respondents were interviewed twice to clarify certain information that was given during the first Official Department Interview. He believed Competiello conducted the first interviews and there was certain information that had to be elicited from a second interview. He said that after

² According to the Radio Code Signals Insert, the designation 10-30 signifies a robbery in progress.

consultation with the Department Advocate's Office, it was determined that the charges were appropriate.

Mickulas admitted that he does not dictate what is written in the Patrol Guide. He said that during his time on patrol with the New York City Police Department, he responded to many jobs and calls for help. He stated that instinct is a great asset and played a role in assessing a situation a significant number of times. He testified that one must assess situations on a constant basis. Mickulas stated that Rahman's misconduct was separate and distinct from the Respondents' misconduct. He said that looking at the entire incident, Rahman was called by the killer and what he did was incorrect as far as it was an unusual incident for him at Communications. He stated that Rahman should have elicited more information, and he determined that a Schedule A Command Discipline was appropriate. He said that the fact that Competiello worked in the Transit Bureau did not have any impact on him in terms of his opinion. He stated that Competiello's opinion was his opinion and he respected it, but he [Mickulas] made the decisions. Mickulas acknowledged that one is not supposed to do less within the confines of the 75 Precinct in terms of how he or she responds to a 10-10 call, but stated that everyone should respond to the job in the same fashion.

On questioning by the Court, Mickulas stated that he believed the 10-10 designation on the initial 911 call was appropriate. He admitted that the victim did not say that she was raped. He agreed that the 911 operator possibly could have written that the caller sounded distressed. He said that he knows 911 deals with a large volume of calls and in this case, it "would have been nice" if the operator had indicated something further, but the individual passed it on as a call for help with the address and thus provided the information gleaned from the tape. He agreed that the 10-10 call for help came through Rahman's computer and was what he saw.

Mickulas admitted that he did not believe the Respondents could have accessed the second floor from the first floor because there were two apartments and there was no access from one to the other. He agreed that the doorbell in the front of the house went to the second floor and the first floor must have been accessed from the back. He acknowledged that even if the people answered from the back, the Respondents would not have had access to the second floor, but at least they would have known that somebody was up there. He stated that as the first-floor tenants indicated, they had heard people upstairs. He said that they heard a child and knew there was a child upstairs from residing there. He stated that the first-floor tenants were home and he believed they would have provided more information if they had been interviewed initially. He believed that if the Respondents had requested the ANI/ALI telling them that the call emanated from the second floor of that residence, that information coupled with the knowledge that there were people downstairs saying there were people upstairs might have led the Respondents to call for a supervisor to assist in making a determination. He stated that he was not saying that the supervisor would have then said they had to go in, but at that time, a supervisor should have been called for direction, opinion, and further investigation.

Police Communications Technician Mohammed Rahman

Rahman, a six-year member of the Department, is currently assigned to the Communications Center. He stated that he was primarily assigned to Metro Tech. He testified that there are two sections to Metro Tech, one involving taking 911 calls and the other involving acting as a dispatcher. He said that on certain days he takes calls, but mostly he dispatches. He stated that when he dispatches, he sits at a console where there are two computer screens to look at, a telephone, and a recorder that records all the conversations. Rahman testified that the

screen from which he dispatches is the SPRINT screen of jobs that come from 911.

Approximately 25 percent of the jobs do not require police response and must be deferred to a supervisor's screen, and the dispatcher must ensure that all notifications have been made. He said that once a call needs to be dispatched, he makes sure that it gets dispatched.

Rahman testified that there is a procedure guide of roughly 500 pages that dispatchers must follow. He said that Emergency Medical Services and Fire Department calls would be referred to a supervisor. He explained that certain Emergency Medical Services jobs require police response, so the dispatcher must screen them and then defer them to a supervisor's screen. He stated that there are also Organized Crime Control Bureau jobs that do not require immediate police response, but the supervisor makes notifications. There are also jobs that are "for notification, Department only" and the dispatcher must refer them to his supervisor's screen.

Rahman stated that the screen before him has sections where he can see pending jobs that were sent through 911 and there is an upper section in which he can type and look up jobs himself. When a job comes in, it arrives with an address. If he wants to look at a job, he has to pull it up on his upper screen. Rahman testified that for a SPRINT job and for all 911 jobs, he has two screens, one of which is for "running plates" and not for SPRINT jobs. A 10-10 call would come in the same screen as all other jobs, but once he gives it out, he can no longer look at that job. He said that he only looks at jobs routed to him through 911, and once he puts a unit on a job, it disappears from his screen, but he can still look at it whenever he needs to. Rahman explained that putting a unit on a job means giving out a job. He further explained that he gives jobs out to one of the sectors responding. He stated that while he is at his station, there are jobs pending on the screen to be given out and there are jobs that have already been given out, but the dispatcher is still responsible for getting "finals" and making sure that the jobs have been closed.

Rahman said that in a minute he gets five new calls, but he still must look at pending jobs from before, as he has both jobs coming in and jobs that have been given out which need final dispositions. He said that the zone he was working that day kept him busy with about 50 pending jobs for which he was responsible. He stated that jobs are not necessarily calculated by the hour because the total is not simply new jobs but old jobs and new jobs combined. He testified that when he is sitting in front of the screen he is the only person responsible for all of the calls coming in on that screen.

Rahman testified that procedures for the landline are taught in class and it is only supposed to be used for Department purposes. He said that it is not supposed to be a landline that people can call into for more information on jobs. He stated that he must instruct callers to call 911 if anyone has information. He testified that depending on the time frame, he receives two or three calls every five minutes into the landline. Rahman stated that the landline calls are from a precinct or police officers, mostly members of the service calling in regard to jobs. He further stated that since he has been working as a dispatcher, he has only received four or five calls on the landline that have come from the outside. He testified that in 2005, he worked the midnight tour, from 11 p.m. until 7 a.m. He agreed that he reviewed a portion of the radio transmissions tape between the Respondents and himself. Rahman stated that the tape that comes through 911 is different from the radio tapes that he is involved in. He explained that when he gets 911 calls he is sitting at a console where he has control over the calls. He said that he is able to take one call at a time and is given a time frame in which to get necessary information, but is allowed to take as much time as necessary because he is only talking to one person.

Rahman agreed that it is his voice on the tape. He said that he could listen to the tape and see what was going on in the tape, but he had no idea what was displayed on his screen until he heard the recorder. He agreed that he told the Respondents several times that the call came from [REDACTED]. He further agreed that on the tape he stated twice or perhaps three times that the call was from the second floor and the caller hung up. Rahman acknowledged that based on the tape he stated, "[REDACTED], victim called and hung up." He recalled receiving a telephone call from the killer in this case, and estimated that, to the date of the incident, someone outside the Department had called him on the landline on perhaps one other occasion. He said that whenever he checks a callback on the landline, it registers as a blocked number. He explained that the landline is automatically set so that people from outside cannot call that number. Rahman added that if people have an emergency, they should call 911, and that is how it is set up. He said that all of the telephones in the radio room are set up the same way, so that the numbers register as blocked numbers.

Rahman stated that he started dialing the number to check the callback. He said that since it was time for a shift change, it was time for him to leave. He explained that as someone was relieving him, he had to ensure all of the other jobs had been handled and acquaint his reliever with the situation. He stated that many people have call intercept and cannot be called with blocked numbers so the number must be unblocked. He estimated that for two out of every 10 calls, the individuals have call intercept. Rahman testified that, as heard on the tape, he unblocked the number in this case to call back the individual. He further testified that because there were other jobs at the same time, he had just wanted to make that call.

Rahman said that when he reviewed the tape, he was informed that the killer had called him. He testified that according to the guidelines, he is instructed not to take calls from outside.

He said that he is not allowed to put a job into the computer or on his screen if a police officer or precinct calls and tells him to because they must call 911. He said that until the day he testified, he could only recall two to four calls calling him back on the landline because they did not have voicemail or an answering service. He testified that if he were to receive a call on the landline and the caller asked if someone had just called that landline number, he would not be able to make a connection between the call that had come in on the landline and the call that had come in on the screen. Rahman stated that he does not have caller ID on the landline. He said that a number appears during the time he is with the caller, but for him to make a connection; he would have to sift through approximately 30 jobs that are already on his screen.

Rahman agreed that he received a Command Discipline in connection with this case for failing to investigate the landline call and ask for further information. He stated that according to guidelines, dispatchers are supposed to take calls at face value; when a caller says something, the dispatcher is supposed to believe it. He explained that dispatchers receive all types of calls and cannot ignore any call based on the age of the caller, and if someone says he or she did not do something, the dispatchers must assume the individual did not do it. He said that he has to input what the caller says on the screen, and he is not supposed to question him or her. He said that when he is checking a callback and the person picks up and says he or she did not call, regardless of the sex of the person, he must take that information and relay it to the unit without asking questions to determine whether or not the caller is telling the truth. He agreed that knowing the information that is known now, he could have asked the landline caller [murder suspect] one or two more questions, but the person already had said he had not called, and Rahman was not in a position to question him. He stated that he could be disciplined if something happened over the air and he did not realize what was happening because he was on a landline telephone call.

On cross-examination, Rahman agreed that he received the initial call that came through the computer from the 911 operator but did not take the call from the actual victim. He acknowledged that it was not until the preparation of this case that he heard the 911 call. He stated that the actual person who receives 911 calls is the 911 operator, who is stationed in a separate room. He agreed that he often does that job also and that he could either take calls from civilians or send out information that has been put into the computer. Rahman agreed that he was working at Central on the date in question. He said that on that day he was covering two housing units and two other precincts. He stated that there was a log and according to the log, there were over a hundred units on his screen during that time. He acknowledged that he was covering the ten units working in the 75 Precinct, the units in other precincts, and "portables." He agreed that it was a lot of information to keep track of and that when he received job finalizations; he knew those units were then free to receive new jobs.

Rahman agreed that he has a list of all the units available and if someone goes on meal, it is his responsibility to put them on meal. He admitted that if a unit is handling a low-priority job and a high-priority job comes up, he will pull the unit and reassign them. Rahman agreed that many things heard on the tape are conversations he was having with units in other precincts, housing units, or other sectors within the 75 Precinct. He further agreed that he was familiar with the part of the radio transmission that had to do with the Respondents. He acknowledged that there was the sound of a phone ringing multiple times without answer on the tape that was a callback from another incident and had nothing to do with this case.

Rahman admitted that he called back the number at [REDACTED] at the request of the Respondents after they arrived on the scene and told him they could not see anything going on there. He acknowledged that the Respondents asked him to call back the number where

the original 10-10 call had come from, as he had the number on his screen. He stated that he was unable to hear the original call from the woman from his position. He agreed that he assigned the Respondents the 10-10 call job where the woman had hung up. He further agreed that the Respondents had to travel to [REDACTED], which could take a few minutes. Rahman acknowledged that between the time the Respondents accepted the job and the time they arrived on the scene, he continued to deal with other calls. He agreed that he assigned the Respondents the job and they were supposed to tell him when they arrived.

Rahman said that if it is on the tape that the Respondents told him they had arrived, they did, but he did not recall the exact words. He did not recall the Respondents saying they could not get in, but recalled their asking him to call back the telephone number. He agreed that he dialed the number for the call back and reached an answering machine that said, "Hi, this is Carla, I am not home right now so please leave a message. Thank you." Rahman acknowledged that he told the Respondents that the call back he made went to a voicemail. Rahman said that now that there are cell phones, one could make a distinction between answering machines and voicemail, but he could not say. He agreed that he could have easily said answering machine instead of voicemail, but happened to use the term voicemail. He was not sure whether or not the Respondents asked him any information as to whether the number he had called had actually come back to that location. Rahman admitted that he did not volunteer to the Respondents that the number had come back to [REDACTED].

Rahman said that when an individual calls from a cell phone, there is a procedure in which the cell site can be identified, which might not be the actual location. He said that he is required to inform the units of the cell site. He added that he is not obligated to say, unless the officers ask, any other information that could be "sacred," because some people do not want

information revealed. He said that if one is going to divulge other information, he or she must check what the rest of the job says, whether it says the person wants to remain anonymous or give information, and added that he does not just give out someone's address or from where the call is emanating.

Rahman agreed that he also has worked as the 911 operator and from what he heard on the tape, the operator did follow the proper procedure. He stated that according to their procedure, the 911 operator was supposed to ask the caller for the borough first before the address, as sometimes different boroughs wind up with the same address. He agreed that the initial caller sounded as if she was hurt or in distress. He acknowledged that the call came to him as a 10-10 call, which is a fairly routine call based on his experience. Rahman stated that a 10-10 call is middle priority, with quality of life crimes below it and assault in progress, robbery in progress, and things of that nature above it. He said that if an operator heard more than two people screaming in a room, he or she could say it was a dispute, but if the operator heard one person screaming, there was no way of knowing the caller's condition. Rahman agreed that hearing a person scream, the 911 operator would put it over as a 10-10 call, screaming woman.

Rahman admitted that when he first heard the tape, he thought the woman was suffering from medical distress, if anything, but said he did not have the power to designate it medical distress because he did not know for certain. He stated that in this case, the caller provided the address, but sometimes in an open line, someone dialed 911 and nothing else was heard, and was designated a 10-10 call. Rahman acknowledged that an open line where the person gave the address and hung up was also designated a 10-10 call. He stated that many open lines where a person did not talk were mistakes. He said that any time the operator could not distinguish what type of emergency the caller had, it was designated a 10-10 call.

Rahman agreed that after the Respondents requested the callback, he told them that it had gone back to a voicemail. He further agreed that the Respondents closed out the job at that point. He acknowledged that a call came to his landline about ten minutes after he had called [REDACTED]. Rahman said that he was not surprised that a call had come back on his landline because precincts call the landline, but he was surprised at the caller. He stated that he possibly made one or two calls on the landline in those ten minutes. He testified that he did not realize that the call to his landline was coming from [REDACTED].

Rahman stated that he did not remember the exact conversation he had with the person who called the landline. He said that anytime he checks a callback, he must note it on the computer. He admitted that he had people around him and that someone could have been asking him if he was on the midnight tour and if he was going home. He agreed that at the time he spoke to the caller, he did not have a feeling that a call to 911 had come from that location because he told the caller that they had received a call in for the police and the caller said no, but he thinks they misprinted that part of the transcript because if one listened to the tape, he asked the caller if he had called for the police. Rahman agreed there was no way he could have known who was calling because the address had not come up on the computer. He agreed that if he had known that the call had come from [REDACTED], he would have told the Respondents who had just responded there that the ANI/ALI he called and said went to a voicemail had called back. Rahman said that was not the case and at the time, he had not had any prior calls where the person called him back after he called him or her.

Rahman acknowledged that he took a Command Discipline of four days on this case. He said that originally it had been a CD for four hours, but he had not accepted it because he felt he followed the right procedure and had been written up for a 911 procedure when he had not been

acting as a 911 operator. He said that he turned down the Command Discipline, received Charges and Specifications, and was then notified for this case. He said that as of the day of his testimony he had accepted his responsibilities for misconduct by signing the Command Discipline.

On redirect examination, Rahman agreed that he initially was contacted by the Department Advocate's Office regarding this case back in November of 2006, but stated that he did not know if he had received a call about the Command Discipline and denied receiving Charges and Specifications at that point. He said that the address [REDACTED] was what the 911 operator put on the job and what he told the Respondents. He agreed that he told them second floor apartment³ several times.

On questioning by the Court, Rahman admitted that on a daily basis, someone in his position is either a 911 operator or a dispatcher. He said that for the first break, if an individual is the dispatcher, he or she takes 911 calls and then switches back. He acknowledged that throughout the day an individual does not switch back and forth between operator and dispatcher. He did not recall whether he had taken 911 calls on the date in question, but said that during the beginning of their tour, before the first break, the technicians sit as operators for the first half hour and later dispatch, but that is not on a regular basis. He acknowledged that it is the same procedure now. He stated that if there are too many people, the extras stay in the room and do not take calls, but whenever space is available, the extras take calls for 30 minutes.

Rahman said that he recently signed the Command Discipline. He acknowledged that his position had not changed once he was initially offered the Command Discipline, and no one moved him from dispatch to something else. While he denied that he could be disciplined for picking the landline up, Rahman said that he could be disciplined for adding more information to

³ Upon review of a recording of the transmission, the word "apartment" was not, in fact, used.

a job based on the call from the landline. He stated that after listening to the tape, as he was dialing the telephone number and checking the callback number, he was also talking to field units and inquiring about shots fired. He said that he gave that job priority over a call for help. He said that he had not spent much time with the callback number; that he had been looking at it and dialing with his left hand while doing something else.

Rahman said that until the day of the incident, he had received only two calls on the landline from someone who was not a member of the service. He admitted that if dispatchers get calls on the landline, according to guidelines, they are not supposed to proceed with the calls and are instructed to cut the calls off. He said that he asked if the caller had called for police, and if he had said yes, according to procedure, he would have had to direct him to dial 911 because he did not have the time to ensure that the caller received all the help he needed. He explained that he must put priority on the open air over the landline. Rahman stated that sometimes dispatchers do not pick up the landline because they have jobs on their screens that take priority over the landline. He testified that he could not recall what happened with the other call to the landline which came from an individual who was not a member of the service. He said that to the day he testified, he had received perhaps three calls where people had called the landline back, and he estimated that he checked about 20 to 30 calls on a daily basis that involved callbacks.

The Respondents' Case

The Respondents called Sergeant Michael Resseque as their witness and testified in their own behalf.

Sergeant Michael Resseque

Resseque, a 17-year member of the Department, is currently assigned to Housing Borough Brooklyn. He stated that he has been a patrol sergeant for seven years, five years at the 81 Precinct and two years at the 75 Precinct. He said that he was approved for a three-quarter line of duty retirement and is currently on vacation leave from the Department.

Resseque testified that he was a patrol supervisor in the 75 Precinct on the date of the incident. He estimated that on a midnight tour during August of 2005, at least ten units turned out of his command. He explained that since there were two people per car, he estimated that there were 20 patrol officers on duty. He testified that there were probably at least two sergeants for those officers, himself included. He acknowledged that on the date of the incident he was the supervisor for the Respondents.

Resseque stated that he was familiar with the calls that came through on a regular basis, specifically during midnights, at the 75 Precinct. He explained that a 10-10 call is a very low priority call. He agreed that a lot of 10-10s came through the 75 Precinct on the midnight tours. He estimated that during one midnight shift, from midnight to 8 a.m., on any given Sunday night, the 75 Precinct might receive 30 10-10 calls, at least three per unit. He stated that the general disposition of these jobs was a 90X, an unfounded job, or a 90Y, unnecessary. He estimated that 90 or 95 percent of the cases were closed with either of those dispositions.

Resseque explained that a 90U is unable to gain entry. He stated that there is nothing in the Patrol Guide that states that a sergeant must be called to the scene when an officer responds to a 10-10 and is unable to gain entry. He further stated that there was no rule at the 75 Precinct at that time that said a sergeant had to be called to the scene in that situation. As the supervisor who worked during that time period, Resseque testified that he would not have expected officers

to call him to the scene when they were closing a 10-10 job as unable to gain entry. He said that he has never been called to a job with the designation of unable to gain entry. He indicated that no other sergeants had a rule that they had to respond to such a job. Further, since this incident, he was not told that there was a change in policy at the 75 Precinct requiring sergeants to be called to the scene in all such situations.

He noted that while he is on patrol, he has a radio and hears what dispositions and jobs are assigned to officers. Resseque stated that he is free to respond whenever he wishes, but said that he has never responded on his own initiative to a 10-10 call unable to gain entry. He stated that if every sergeant had to respond to every 10-10 call unable to gain entry job, patrol would be chaos. Resseque agreed that he had had an Official Department Interview in regard to this matter. He stated that he was asked questions by the investigators as to whether or not he thought the Respondents, who were directly under his supervision, should have called him. He testified that when he was asked during the interview whether or not he should have been consulted, he stated that he never expects to be called to that type of job. He stated that he was called to the job the second time the job came over. He testified that when he arrived at the location he found that the Respondents had gained entry. He further testified that there was a woman in the back bedroom who had been stabbed and beaten with a hammer and that the Respondents had the man who did it in handcuffs on the couch.

Resseque said that the Respondents committed no misconduct while he was there. He agreed that because the job was a murder, he had had to write up a Department Memorandum for the Chief of Patrol that night, detailing the murder that had been committed. He stated that he had done a preliminary investigation at that point, but acknowledged that he thought the Respondents had committed no misconduct at that time. Resseque acknowledged that he was

fully familiar with the facts of what the Respondents were confronted with on the date in question, but as their supervisor, he did not think the Respondents committed any misconduct. He denied that the Respondents should have called him to the scene given the information they had at that time. He stated that had he been there, faced with the same circumstances as the Respondents, he would not have done anything differently. Resseque admitted that he would have closed the job as unable to gain entry as well, and stated that there is no impropriety with closing a job with that designation.

On cross-examination, Resseque estimated that he has responded to thousands of 10-10 calls for help during his career. He said that the normal procedure when responding to a 10-10 call for help is to knock on the door, ring the doorbell a few times, ask for a callback, and see if the operator can determine "what's going on." He admitted that very rarely is there an occasion where an individual knocks on the neighbor's door to ascertain whether or not he or she heard any sounds emanating from a particular location where there had been a 10-10 call. He acknowledged that when responding to a 10-10 call, one could go to the back of the house to determine whether or not there is another way of gaining entry. Resseque stated that it was normal to knock on the front door, listen, try the door, and then ask for the callback to see if the operator could reach the person who called. He acknowledged that he would probably not have gone to the back of the house to ring the doorbell or see if there could have been a response at the back door because the apartment was on the second floor. He agreed that if he had thought it was a one-family home, he perhaps would have knocked on the back door. He stated that when he arrived at the scene on August 14, 2005, he did not have an occasion to speak with the tenant on the first floor.

On redirect examination, Resseque said that the 90X, 90Y, and 90U are closeouts of a job, meaning that the job is finished by the officers and they are ready to move on to the next one. He admitted that none of those designations indicate that the job is pending or holding. He testified that if the officers respond to a location and are unable to gain entry but received the initial call for help, based on what the Respondents had on the date of the incident, there was no basis to kick down the door. He stated that it would not change anything if a sergeant were called to the scene. On further cross-examination, Resseque admitted that if he had been called to the scene for whatever reason during the first initial callout, he would not have gone to the back of the house to ring the bell or see if the Respondents were able to gain entry through the back door.

Respondent Hamilton

Respondent Hamilton, a 12-year member of the Department, is currently assigned to the Domestic Violence Unit at the 75 Precinct. He stated that he has been in that unit for seven months, since he put in for a vacancy that had come up through his Commanding Officer's office and received the position. He admitted that the vacancy had come up after the charges in this case had been issued to him. He stated that he has been at the 75 Precinct his whole career. He said that until the time he was made a domestic violence officer, he did uniformed patrol. He stated that he is currently on full duty status, has never been less than full duty at any time during his career, and has never been modified for any reason. He further stated that he has never had his gun taken away from him for any reason nor has he ever been served with Charges and Specifications other than the charges he was contesting on the day of testimony.

Respondent Hamilton testified that on August, 14, 2005, he was doing his regular midnight tour of 11:15 p.m. to 7:00 a.m. and assigned to patrol "sector John" in the 75 Precinct. He stated that his partner was Respondent Terepka. He further stated that they had an arrest, which accumulated overtime after the tour. Respondent Hamilton said that he would have to check his Activity Log to determine when the arrest was made, but stated that the arrest was not a direct result of the charges in this case and referred to a different incident that had occurred prior in the tour. He agreed that he and his partner were both in uniform on patrol and there came a time where they responded to [REDACTED]. He testified that they were dispatched via Central to respond to the location for a 10-10 call for help.

Respondent Hamilton explained that 10-10 calls are low-priority jobs. He further explained that whenever the operator does not have a category or code for the job, he or she puts it in as a 10-10 call. He stated that a 10-10 call could be anything. He admitted that he did not hear the actual 911 call made by the Complainant on that day. He stated that the dispatcher who relayed the job told him and his partner that it was a 10-10 call, [REDACTED], second floor, and "that was it." He agreed that he had listened to the tape and reviewed the transcripts that had been provided since then. He stated that he did not ask what floor it was when he and his partner were initially dispatched because the dispatcher had told them second floor. Respondent Hamilton said that it took them three or four minutes from the time they received the call to go to the location to the time they actually arrived at the location. He agreed that they drove to the location. He testified that [REDACTED] was outside of their sector, and that they were responding because "the other sector was stuck on something," either meal or they had an arrest, but he could not remember exactly why that sector did not respond.

Respondent Hamilton stated that during the course of the evening, he and his partner responded to approximately five 10-10 calls. He estimated that on average, given the midnight tour specifically, they were assigned approximately three 10-10 calls. He stated that most of these jobs are closed as unnecessary, which means they actually went to the location, spoke to someone, and either no crime had been committed or the police were no longer needed when they arrived. Respondent Hamilton testified that a 10-10 call could be closed as unfounded or sometimes officers arrive at a location and actually cannot gain access to the location and mark it 90U, unable to gain entrance. He stated that there is a "Y" which is unnecessary, an "X" which is unfounded, and the "U" which is Union, meaning the officers cannot gain entry. He denied the existence of a 90V code.

Respondent Hamilton said that later he discovered that [REDACTED] was a two-family house, but it was a two-story house that actually looked like a one-family house. He explained that it had a door and windows in the front, and the two windows downstairs would make one think it was a one-family house. He admitted that at the time he thought it was a one-family house and he noted that he had never been inside the location before.

Respondent Hamilton testified that when he and his partner arrived at the location, they knocked on the door, and, as indicated in the photographs (Exhibit 2A through 2F), there were two small windows on which they knocked as well. He further testified that they then checked the callback and were told by the dispatcher that it had gone to voicemail. Respondent Hamilton stated that although he was listening, he did not hear any noises coming from inside the house when he arrived. He noted that the front windows upon which he knocked were street-level and next to the door. He testified that, having now been inside, he knew that the door upon which he

knocked led to the second floor and the windows upon which he knocked led to the first floor apartment.

He stated that he received no response when he knocked on the windows to the first floor apartment or rang the doorbell. He stated that as he and his partner were leaving, they drove around to the side of the house, and it has "what looks like a regular storage shed." He said that he would not picture it being an entrance to anyone's apartment because it actually looks like a shed.

Respondent Hamilton explained that to request a callback he would go over the radio via sector John to Central and ask Central to check the callback as he and his partner were not getting an answer at the door. He further explained that the dispatcher would, in turn, call back whatever number had come up on his screen and see if he could get an answer. He acknowledged that he did not hear the callback being made over the radio. He stated that after he had asked for the callback in this situation, the dispatcher communicated to him that the call had gone to voicemail. He said that at that point, he and Respondent Terepka sat there "another few minutes" and then marked the job after they drove around to the side to make sure there was no other entrance.

Respondent Hamilton stated that they marked the job as 90 Union, unable to gain entry, 90U. He said that he did not mark the job as unnecessary and agreed that unnecessary would have been a Y. He testified that he filled out his Activity Log according to procedure that night. He said that he put the designation in his Activity Log as to what happened on the initial call to [REDACTED] immediately after the job. He testified that as he gave the dispatcher the disposition, he wrote it in his Activity Log, 90U. He stated that according to the Activity Log, he was at the location approximately nine minutes. Respondent Hamilton said that he had not heard

any sounds whatsoever coming from either the first floor or the second floor. He stated that after he knocked on the door, he listened to the door and actually tried to see into the first floor window, but he was unable to see into it. He noted that one could not see into the second floor at all. Respondent Hamilton stated that he and Respondent Terepka stayed at the location until the dispatcher "got back to [them]" with the callback.

Respondent Hamilton testified that the street was deserted at that time in the morning, approximately 6:30 a.m. He said that if a noise inside the house was loud enough, he would have been able to hear it from where he was. He stated that he did not hear anything in the nine minutes he was there, not even the phone ringing inside the house when Central called. Respondent Hamilton acknowledged that he never heard the phone ringing, whether it was over the radio or while he was at the location. He agreed that at some point he left the location and gave the job back as 90U, unable to gain entrance.

Respondent Hamilton stated that there came a time in his tour where he was given another job at the same location, approximately 30 minutes later. He said that the second job he and his partner got to [REDACTED] came over as a "24," a past assault, meaning an assault that occurred in the past. He stated that the job would have come over as a "34" if the perpetrator had still been present, indicating that the assault was still in progress. He stated that the dispatcher for the second job to the location was different from the initial dispatcher as the second one was a female. He did not remember the second dispatcher's name but agreed that he had various communications with her later. He said that when he received the call to respond to the location he had just been to a half hour before, he asked the dispatcher to check the callback because he and Respondent Terepka had just been there and had been unable to get in.

Respondent Hamilton testified that the second dispatcher, the female, gave him the information that it was a male who had called. He further testified that the previous caller had been a female.

Respondent Hamilton said that after that they went back to the location and, he found out later through the tape, the dispatcher called the callback and told the caller to come to the door and open it, which he did. He stated that when he and his partner arrived at the location, the male suspect was not out there, but shortly after, within 30 seconds, he opened the door. He said that the person who opened the door was a male black who was not wearing a shirt and was covered in blood. He stated that he could only describe the crime scene as "horrific." He testified that when the man opened the door, there were steps leading up to the second floor behind him. He stated that an individual could not get into the first floor through that door.

Respondent Hamilton said that the man tried to come up with a story that "some guys [had] assaulted him and his girlfriend, that he owed them money." He said that it was "a weird story" and that the man did not specifically describe his injuries or the condition of the girl. He stated that the man had several lacerations to his hand which appeared to be self-inflicted. He further stated that the man was covered in blood. He said he believed the man's name was [REDACTED], and that upon hearing his story, Respondent Terepka placed him in handcuffs.

Respondent Hamilton testified that when one entered the location, there was a little bedroom upstairs on the second floor to the right in which he saw the woman. He stated that Respondent Terepka placed the man in handcuffs and put him on the couch while he went to check on the female who later expired, whose name he had forgotten. He said that she kept saying over and over, "He raped me, he raped me." He testified that when his partner brought the man into the hallway, the woman "just pointed and just kept saying, 'Him, he raped me.'" He further testified that the woman was covered in blood with visible lacerations to her face.

He stated that she was naked from the waist down. He said that there was a little baby sitting on the bed in a pool of blood. He stated that the baby girl was also covered in blood, but they were not sure whether or not she was injured at the time.

Respondent Hamilton said that upon seeing that and having the victim point out the man already in handcuffs as the one who had done that to her, the Respondents immediately called for an ambulance and requested the patrol supervisor. He said that they actually called for two ambulances, one for the man and one for the victim. He added that they later called for a third ambulance for the little girl so that she could be examined. He said that it "seemed like an eternity" for the ambulances to respond, that it took about 30 minutes, which is a long time. At the time, he did not think that the woman was going to die, but acknowledged that he is not a "medical person." He stated that the delayed arrival of the ambulance might have contributed to her death, but acknowledged that he knew nothing about that.

Respondent Hamilton agreed that the victim gave the information to him, obviously pointing at the man, and later expired. He stated that there was a hammer recovered from one of the bedrooms, which was covered in blood. He further stated that there was also a knife recovered which was covered in blood. He testified that the man used both weapons to assault the woman. He said that he later found out that the woman was a baby-sitter for the tenant of that house. He agreed that the mother of the child, the tenant, was not there. He admitted that the woman who eventually expired was not related to the child. He assumed that the man who committed the crime was the absent tenant's stepfather. He agreed that it was "bad luck" he stopped by for a visit, as he saw the babysitter and ended up raping and killing her.

Respondent Hamilton testified that he obtained a great deal of information in his dealings with the District Attorney's Office and their case against the killer. He said that although he did

not recall the name of the individual with whom he met from the District Attorney's Office, he knew the individual was the Bureau Chief. He said that in preparing for this case he testified before the Grand Jury. He agreed that it was the Bureau Chief from the Kings County District Attorney's Office and said it is possible that he dealt with Kyle Reeves, but he was not sure. Respondent Hamilton said that the Bureau Chief prepared him for this case and he told him everything that he had seen. He stated that no one from the District Attorney's Office ever accused him of misconduct. He agreed that the first time he actually heard the victim's words on the tape of the initial 911 call was in the District Attorney's Office while preparing to testify before the Grand Jury.

Respondent Hamilton testified that when he heard that tape, he felt that if he had heard the tape earlier, he would have definitely called the sergeant there and let him make the decision as to whether or not the door should have been taken down. He admitted to having no idea when he received the information from the initial dispatcher that the woman who had called sounded like she was in such distress or had a medical need. He agreed that he had received 10-10 calls for help or similar calls in the past where information was conveyed to him by the dispatcher about how the caller sounded. He said that usually the dispatcher will mention if the perpetrator is on the scene, if the perpetrator is armed and how, if the perpetrator left the scene, if there are any weapons involved, or if screaming, gunshots, or what appear to be gunshots were heard in the background. He said that nothing was conveyed to him that day with respect to the condition of the first caller.

Respondent Hamilton stated that he did not call a sergeant to the scene during the nine minutes of his initial response to [REDACTED]. He said that no sergeant was called because there was no evidence of a crime that had been committed. Respondent Hamilton stated

that there was no broken glass or screaming, and the Respondents had knocked on the door but did not have probable cause to break down the door based on what they had. He said that he did not think at the time that the sergeant would have been able to do anything more than he and his partner had done because a sergeant has no more legal right to break down a door than they do. Respondent Hamilton agreed that he often responds to 10-10 calls and is unable to gain entry to the location. He admitted that he never called a sergeant in any of those situations or given the specific set of facts such as those at [REDACTED]. He further admitted that it had never been conveyed to him, prior to that day, that a sergeant should be brought to the scene on any call for help where he could not gain entry. He said that since this incident, after he had been accused of misconduct, there had been no changes made in the 75 Precinct itself with respect to the way those jobs are handled. He stated that no one at the precinct including Resseque, his immediate supervisor, told him that he had committed misconduct. Respondent Hamilton said that neither supervisors nor anybody else at the command had given him any feedback as to his work that day. He stated that no one told him that he should have done things differently.

Respondent Hamilton said that he called the sergeant once he saw that a woman was injured that badly and he had the perpetrator in custody because that was an actual, confirmed assault. He further stated that it was also a sexual assault, and it is mandated that officers call a sergeant for that type of job. He said that after he saw what the situation was, he called the ambulances and established a crime scene to preserve the evidence, all basic things that must be done for that type of job. Respondent Hamilton testified that he knew what to do because of experience. He acknowledged that "most of those things" are mandated by the Patrol Guide as far as notifying a sergeant. He said that he is not aware of anything in the Patrol Guide or any

other order given to him that says a sergeant must be notified when an officer is unable to gain entry on a 10-10 call.

On cross-examination, Respondent Hamilton agreed that he saw no evidence of foul play on the outside of [REDACTED]. He admitted that there can be "plenty" of evidence of foul play on the outside of a location. He said that he and his partner once "backed another sector" on a job, went to the building, heard screaming, and saw shell casings in the hallway. He stated that that would constitute evidence outside, even though it was in an apartment building. He said that he knew something had happened in front of that apartment because he saw the shell casings there. He admitted that there might be evidence inside an apartment even if there is no evidence outside, but said that he and his partner had no legal grounds for going inside the apartment in this case. He agreed that if there is no evidence of foul play on the outside of the house, it does not necessarily mean that there is no evidence of foul play on the inside of the house.

Respondent Hamilton acknowledged that most 10-10 calls come back as unnecessary. He stated that unnecessary means he went, spoke to someone, and he or she said that the individual did not need the police anymore or he or she thinks that it might have been an accident and the individual did not mean to dial 911. He said that "90 Union" means he knocked on the door, knocked on the window, checked the call back, and could not get in.

Respondent Hamilton admitted that he was not "in on the plea process" nor was he involved in the details of the killer's plea. He acknowledged that ultimately, the killer took a plea, but knew neither the plea nor the sentence. He agreed that he did not remember the name of the victim, but said that he was not going to remember every victim. He stated that since that case, he has had five or six homicides and was not going to remember every single one.

Respondent Hamilton agreed that the 75 Precinct is a very busy precinct, that they receive many 10-10 calls, and that many 10-10 calls are unnecessary or unfounded. He agreed that in his opinion, the 10-10 calls are low-priority calls.

Respondent Hamilton agreed that it was not until he got into the vehicle and passed the back of the house that he noticed that there was a back door, which he believed to be a shed. He stated that he would not have known whether it was a shed or an apartment unless he had actually gone to the back of the house on the first call, but his reasonable thinking from seeing the house was that it looked like a shed. He said he did not think it was important to actually find out whether it was a shed or an apartment at the time. He said that based on the fact that he was sitting on the witness stand, now when he responds to a 10-10 call at a home, he goes to the back of the house and rings the doorbell. Respondent Hamilton agreed that based on the fact he was sitting there, in hindsight perhaps he should have taken that extra step to go to the back of [REDACTED] to ring the doorbell. He admitted that he never knocked on the neighbor's door at any point when he responded to [REDACTED] to ascertain whether any sound had come from the home. He stated that as is visible from pictures of the location (Exhibit 2A through 2F), the nearest neighbor's house is approximately 30 feet away.

Respondent Hamilton agreed that there was a first-floor tenant at the location. He acknowledged that had he gone to the back of the house, rung the bell, and spoken with the first-floor tenant on the first call, it probably would have made a difference to him had that individual told him that he or she heard a bump coming from upstairs. Respondent Hamilton stated that by the same token, if that person had come out to see who was knocking on his or her window, he could have received that same information. He said that it was not his experience that most people in East New York come out of their homes and are ready, willing, and able to give

information to police officers. He stated that people are less inclined to talk to the police in East New York and in that particular precinct, people are not forthcoming with the police. He said that somebody could shoot someone else right in front of an individual, and the individual will say that he or she did not see anything nor does he or she know anything, and that is "just the nature." Respondent Hamilton agreed that he would not have expected someone to just come out of the first-floor apartment and offer information.

Respondent Hamilton agreed that he heard Rahman stating [REDACTED] and second floor on the tape. He could not say that he remembered it from August of 2005, but could say he remembered it from hearing the tape recently. He stated that if a dispatcher tells him second floor, it means second floor, but if one listens to the tape, it says second floor, private house. He agreed that the tape might say second-floor apartment, but his recollection is second floor, private house. He said that hearing second floor means the second floor, and it could be a one-family house, but the dispute was occurring on the second floor and may have been called in from the second floor. Respondent Hamilton said that he thought it was a one-family house.

Respondent Hamilton agreed that his attorney advised him of all the Patrol Guide sections regarding false and misleading statements during his Official Department Interview in November of 2005. He acknowledged that to his recollection, he answered all the questions truthfully and honestly. He recalled giving a description of the house, but did not recall exactly how he described it, except for describing it as a box-type house. He said that he could not remember whether his description at the hearing was based on his recollection of the house from the first call or the second call. He did not remember stating at any point during his hearing that it was a three-family house.

Respondent Hamilton acknowledged that when he went to the location, he knocked on the door and rang the doorbell. He admitted that Respondent Terepka was behind him when he rang the doorbell. He acknowledged that although he did not know exactly which side Respondent Terepka was on, he was out of the car with him. He said that the doorbell was on the inside of the door and one must open the storm door in order to gain access to the bell. He stated that he knocked on the interior door at least three or four times. Respondent Hamilton agreed that he had observed the front windows and noticed nothing unusual. He stated that when he looked through a window, he was looking for signs of foul play or that someone was home. He said that based on the information the dispatcher gave to him and his partner, they had no probable cause to break down the door and at that point, there was no need for a supervisor.

Respondent Hamilton agreed that occasionally he received calls from the dispatcher and was given more information. He said that many times, if a job was what cops consider "heavy," such as a robbery or an assault in progress, Central would give the officers a complete description: what the "guy" was wearing, which way he ran, whether he was still there, or whether he had a gun, but then for other jobs, Central merely relayed that there was a 10-10 at a certain address and they had nothing further. He agreed that there had been an occasion prior to this incident where he had received a call and the person said the caller called and hung up. He admitted that when he heard that the caller called and hung up, he thought that a child was playing on the telephone. He stated that he was "pretty sure" that most of the time when other cops hear that the caller hung up, it turns out to be children playing on the telephone or someone who dialed 911 by mistake and hung up. He acknowledged that the 75 Precinct is a high-crime area. He stated that the majority of the calls that cops on patrol get are family disputes, followed by robberies, homicides, and stolen cars.

He admitted that if he had known that the perpetrator called the dispatcher, it would have made a difference. He acknowledged that it would make a difference to him if someone called back the dispatcher and said he or she did not need help.

On questioning by the Court, he stated that he was the recorder on the date in question. He estimated that he has made 150 and assisted 100 arrests in his career at the 75 Precinct. He stated that patrol officers do not normally attend the sentencing for people whom they have arrested, but detectives usually do. He agreed that many times he does not know the sentence a person takes on cases where he made the arrest unless he is actually in court on that day for that particular case. He stated that he has seen Schrammel, who handled the homicide investigation in this case, one or twice since the investigation, but had not asked him about the sentencing outcome of the criminal case.

Respondent Terepka

Respondent Terepka, a seven-year member of the Department, has spent the duration of his career in uniform patrol at the 75 Precinct. He stated that he is currently full duty, has never been less than full duty, and has never been modified for any reason. He said that he has never had any Charges and Specifications other than those to which he pleaded Not Guilty in this case. He estimated that he has made 100 arrests in his career. He stated that he has many arrests for assaults, stolen cars, and domestic violence.

Respondent Terepka testified that he was working as the operator on the midnight tour with Respondent Hamilton on the date in question. He agreed that they were both on uniform patrol and responded to [REDACTED] twice during their tour. He said that initially they received a 10-10 call to the location. He stated that they were responding for another sector and

it had taken them approximately three minutes to arrive at the location once they received the job.

Respondent Terepka stated that they pulled up to the location and it was a very quiet morning. He testified that they did not see anything and attempted to make entry. He stated that the house appeared to be a one-family home, it looked like it was a small building, nothing big, and there was a backyard. He testified that his partner approached the door, opened the first door, and then knocked on the interior door. He said that he was on the right side and was able to peek in the window, which was accessible to them because it was directly in front of them. Respondent Terepka stated that he then walked to the corner where he had a view of "what [was] going on around the house." Respondent Terepka said that when he walked around the house, he saw a structure attached to the house. He explained that access to that area was somewhat limited because it was a gated area and there were bushes. Respondent Terepka admitted that to gain access there he would have had to climb the fence, but he did not do so. He stated that he thought the door in the back was a shed. He said that he or his partner knocked on windows at the ground level and "peeked in there, too." Respondent Terepka stated that his partner covered the front floor. He said that he felt that his partner had covered it and when his partner knocked, he knocked violently, as though he wanted an answer, but nobody opened the door. He stated that he was listening, but heard no noise coming from inside the house.

Respondent Terepka estimated that by the time they got the callback, they had been on the scene about eight to nine minutes. He testified that after they give the disposition, normally they remain on the scene for an additional 30 seconds in order to put the disposition in their Activity Logs. He said his partner was working the radio that day and believed that his partner marked the job a "90 Union," unable to gain entry to the location. He stated that his partner was

the man on the radio that day, the recorder and designated radio person. He admitted that he was not over the radio at all on the day in question and agreed that his partner had handled the radio transmissions. He said that he heard his partner give the job back as "90 Union" and put it into his Activity Log as "90 Union" as well, with "Union" meaning unable to gain entry. Respondent Terepka acknowledged that his partner requested a callback while they were at the scene and that the dispatcher said that the callback was going to a voicemail. He said that he did not hear the dispatcher dialing the number for the callback nor did he hear a telephone ring inside the house at any point while he was outside. Respondent Terepka stated that after the job was marked, they took time to put the information in their Activity Logs. He testified that they made a right onto Hemlock Street and went around the area before pulling back and leaving to cover their sector, as [REDACTED] was not part of their regular sector.

Respondent Terepka stated that he and his partner went and handled other jobs, but there came a time later when they came back to the location. He said that even though he was driving and his partner was using the radio, he heard the second call that came over the radio. He testified that the second call was a "24," a past assault. He stated that he remembered his partner telling the dispatcher that they had just responded to the location and had been unable to gain entry, and asked the dispatcher to try the callback again. He said that he and his partner made a second attempt and exited the vehicle. He stated that Respondent Hamilton again approached the door and tried to get in, but it took some time for the person to open the door.

He testified that the person who opened the door was a male black in his twenties bleeding from both hands from what appeared to be self-inflicted wounds. He added that the male was covered in blood and partially undressed. He said that he and his partner followed the man upstairs, not knowing whether he was a suspect or a victim of a crime. He testified that they

then discovered a female and a baby sitting on the bed to the right in one of the smallest bedrooms in that area. Respondent Terepka stated that he pulled the male to the side, took him in the opposite direction of where the victim was, and secured him because he had a feeling there was more to the story. He said that he and his partner saw a lot of weapons, knives, in the sink, and then he placed the man under arrest.

Respondent Terepka said that when they first went upstairs, the first thing he remembered his partner doing was going over the radio and requesting an ambulance, which was probably the most obvious thing that had to be done. He stated that after that, they requested more units, a supervisor, and an ambulance. He testified that they were on the scene 25 or 30 minutes before the ambulance finally arrived. He stated that Resseque was the sergeant who arrived on the scene.

Respondent Terepka testified that he asked Resseque to go over the radio himself as a supervisor because normally they say, "Rush the bus, rush the bus," which he believes his partner said. He said that he removed the victim to Brookdale Hospital's Emergency Room, where the victim was pronounced dead. He stated that he appeared at the District Attorney's Office and had a chance to listen to the 911 tape made by the victim. He testified that he was "upset... [and] kind of angry" because if one listens to the tapes, it is "really sad." He said that it was information that could have been given to him and his partner and they could have done a lot more. He stated that he has been around victims of crime, and she sounded like a victim of crime, like she was hurt.

When asked why he did not try to knock down the door or break through a window during his first time at [REDACTED], Respondent Terepka said that they did not have enough information and neither saw nor heard anything. He testified that they had not seen any

blood in front of the location, anything that would have given them a reason to call a supervisor. He added that even with information, from his own experience because he has had cases like this, he would not take the door but would probably call a supervisor with such information. He agreed that he would have done so if he had seen something else.

Respondent Terepka said that they receive 10-10 calls very often, about three to five jobs per tour, specifically on a weekend tour. He believed that on the day of this incident, they had five 10-10 calls, and this was the final one. The other four were marked as 90X, 90 Yellow, and 90 Union. He denied the existence of a 90V or a designation for a V. He said he did not know that night that the killer had called the dispatcher from his caller ID. He agreed that when he was responding to the location for the second time, he and his partner were told that it was a male calling and speaking of a past assault. Respondent Terepka stated that the last thing he heard was that the killer took the plea and noted that he was not called back to testify at a trial.

Respondent Terepka stated that there was no rule in the 75 Precinct at the time that a sergeant must be called to the scene on a 10-10 call when the officer is unable to gain entry. He added that since that day, that has not come into play. Other than the Department Advocate's Office and Mickulas saying he did not do his job, he admitted that no one from his precinct reprimanded him for his behavior on that day. He said that it was their last day before a three-day "swing," and he was informed that their supervisor had said they had done a good job because they had made an arrest and had been able to identify the suspect. He stated that no one said they should have called the sergeant the first time they were at the location, including the sergeant himself. He said that he was "actually shocked" when he was notified about the Official Department Interview and did not know initially why he was being notified. He said that there was nothing in the Patrol Guide that he was aware of nor was there any other rule that

he was supposed to follow that said they should have called the sergeant under those circumstances.

On cross-examination, Respondent Terepka agreed that he learned that the killer had pled guilty to the crime shortly thereafter. He said that it happened when he came back from his three-day swing. He acknowledged that he came across one of the detectives, who mentioned it. He admitted that he did not remember asking the detective and thinks if anything, the detective stopped him. He admitted that he did not remember the victim's name in this case. He said that he had directly dealt with six or seven homicides during his career. When asked if he remembered seeing a doorbell during the first call, he admitted that he did not recall as he was behind his partner, who was the one who approached the door. He acknowledged that he did not pay much attention to the door because he felt that his partner was going to cover it.

Respondent Terepka admitted that he saw the back of the home for the first time while on foot. He said that he walked to the side of the house. He stated that his partner was checking the front, which he also had the opportunity to do, and then he walked all the way to the right and was able to see the back. He admitted that there was a fence to the right, if he was facing the front, and he believed there was another fence toward the back. He agreed that he would have been able to gain access to the backyard had he jumped over or gone around the fence.

Respondent Terepka said that he did not do so on his first call because he felt that they covered the first floor when they knocked on the window and when his partner knocked on the door loudly, because when Respondent Hamilton was knocking, he heard it when he was on the corner of the location. He admitted that his partner violently knocked on the door a number of times.

Respondent Terepka said that based on his impression, it looked like a one-family home, especially the way the stairs were located. He agreed that he was at the location when Rahman said [REDACTED], second floor. He acknowledged that it would be reasonable to believe that if one heard second floor that might mean there was an apartment on the second floor, but noted that they made the attempt to get in. He agreed that it would be reasonable to believe that if there was a house and somebody was in the back of the house, he or she would not hear a knock on the door in the front of the house, but said that he checked the back. He stated that when he looked in the back, there was nobody in the backyard. He said that he had had a visual of what was going on in the backyard and said that if there had been a person in the back he would have been able to see him or her. He admitted that on his first call to the house, he thought there was a shed in the back. He further admitted that he never went to the back the second time because there was no reason for him to as the crime had occurred upstairs. He stated that he did not have the opportunity the second time because he was with the victim and treated the job from the inside, making entry from the front of the building. Respondent Terepka admitted that he never had a conversation with the first-floor tenant. He said that if he had gone to the back and the first-floor tenant had answered the door and said he or she might have heard a bump upstairs, he would have gone back to the front and would have made an attempt to get in, which his partner did.

Respondent Terepka admitted that from his experience, they receive a lot of calls where children are playing with the telephone and people are attempting to make a call and it goes to 911. He agreed that most of these calls come over as 10-10 calls. He agreed that a lot of 10-10 calls are unfounded or unnecessary. He said that he would consider a 10-10 call to be a low

priority call. He admitted that the 75 Precinct is a busy precinct and that many of the calls that come in from the 75 Precinct are 10-10 calls. He added that the 75 Precinct is a high-crime area.

He admitted that he did not knock on a neighbor's door at any point when he responded to [REDACTED] because the home was detached and he felt there was no reason to do so. He said that the job was closed out as "90 Union," "unable to gain entry." He acknowledged that there was no evidence of foul play in front of the house. He stated that he knew he did not see any evidence in the back because he had been able to see over the little gated area without actually going to the back of the house.

FINDINGS AND ANALYSIS

Respondent Hamilton and Respondent Terepka are each charged with failing to conduct a proper investigation in that when they received a 10-10 call for help, they asked the dispatcher to call back the number and when they were informed that the call back telephone call went to an answering machine, they simply finalized the job as unable to gain entry and failed to contact a supervisor to ascertain whether forcible entry or continued investigation would be necessary. I find both Respondent Hamilton and Respondent Terepka not Guilty as charged.

In assessing the facts of this case it is important to understand what the Respondents knew and did not know about the situation. For instance, the Respondents were not advised that the female caller who initially contacted 911 sounded distressed. All that they knew was that they had a 10-10 call for help, a type of run that they routinely receive. They were not informed that shortly after the call back that they requested, a male called the dispatcher from the incident location on the dispatcher's landline to make inquiries. This was the call that caused the Respondents to return to the location; but they were only advised of a "24" past assault. The

Respondents, despite two trips to the incident location were never provided with all of the information relayed in the 911 calls.

Both Respondent Hamilton and Respondent Terepka testified credibly that they initially responded to the location and were unable to gain entry. Respondent Hamilton testified credibly that he approached the front door, opened the screen door and knocked on the door to the second floor apartment. He also knocked on the windows to the first floor apartment that were located close to the door. Respondent Hamilton stated that he also listened at the door for any noises and he did not hear anything. He testified credibly when he said that he did not see any signs of any crime taking place at the front of the residence. There was no broken glass, no blood, and no shell casings on the ground. Likewise, Respondent Terepka testified credibly when he said that while his partner knocked on the door, he went to the side of the house where he could see the back. He testified credibly that he could hear his partner banging on the door and the window as he noted that there was a gate to climb over to get to the back of the house. He also observed that no one was located at the back of the house. He said that he believed the house to be a one-family house and that he viewed the door in the back of the house to be a shed and not the door to any apartment to the house. Both Hamilton and Terepka testified that before leaving the location, they called the dispatcher to call back the residence. When they were advised by the dispatcher that the callback went to voicemail, Respondent Hamilton, who was the recorder during this tour testified that he finalized the job as "90 U" unable to gain entry and they left the location nine or ten minutes after arrival (See CX 1).

This response to the 10-10 call was corroborated by evidence in the case. Competiello, the investigator assigned to this case noted that Respondent Hamilton told him he rang the doorbell. Both Respondents had noted in their Activity Logs that they spent close to ten minutes

at the location. Competiello testified that he used the SPRINT report of the job to determine that they spent at least seven minutes at the location. This corroborates the Respondents claim that they took action and did an investigation while at the scene despite the fact that they neither saw nor heard any evidence of criminality being afoot.

The Department presented in its case in chief the testimony of Detective Competiello. Competiello testified that he investigated this matter and went to the crime scene. He noted that even though he was aware that the incident location was a two-family house, the structure appeared to be a one-family house. He noted that based on his investigation, he did not find that the Respondents committed any misconduct, but that he was not the final word in the outcome of his investigation because he answered to a Commanding Officer who did not ask his opinion on what he thought of the case. Competiello explained that while he conducted his investigation to see what actions the Respondents had taken on the date in question, his Commanding Officer, Mickulas, determined that the Respondents should have called a patrol supervisor to the scene and decided that Charges and Specifications should be preferred against the Respondents.

Competiello testified credibly that a 10-10 call is a low priority call and that there was nothing in the Patrol Guide which stated that police officers who receive a 10-10 call for help and are unable to gain entry have a duty to call a patrol supervisor to the scene. He stated that since this incident, the Patrol Guide has not been amended to make this a requirement and to his knowledge, there were no changes made at roll call to require police officers to call a patrol supervisor to the scene of a 10-10 call when they are unable to gain entry. This information is important in that the Patrol Guide remains silent on the issue of whether police officers need to call a patrol supervisor to the scene when they respond to a 10-10 call and are unable to gain entry to the location.

Furthermore, Competiello testified credibly that he learned from the homicide detectives during the course of his investigation that the murder suspect, Thorne, heard when the Respondents approached the house the first time; that he stayed quiet and had not answered the door. This information further corroborates that the Respondents took action on the 10-10 call while the murder suspect was in the process of trying to cover up his crime.

Moreover, the testimony of Competiello was important to show that even though the tenants in the first floor apartment saw the Respondents approach the residence, they did not answer the door or otherwise respond when Respondent Hamilton banged on their window. This corroborates Respondent Hamilton's testimony that he banged on the windows and further establishes that the first floor tenants knew the police were present and did not come forward to help them.

The Department also presented on its direct case the testimony of Mickulas, Commanding Officer of IAB Group No. 34. He testified that he learned of the case from DCPI who advised him that a murder took place and a police unit had responded to the job a half an hour before the actual homicide was discovered. Mickulas testified that he recommended that the case be treated as an "M" or misconduct case, but that the case was reduced to an "OG" or organization guide investigation which is the lowest level that a case can be classified in IAB. Mickulas testified that he reviewed all of the paperwork related to this case and that he is a "hands-on" Commanding Officer who makes the decision with regard to cases in his unit. After his review of the case, he testified that the Respondents could have done more which included not only the call back, but to request the ANI/ALI which would have given them the location from which the 911 call was generated and told that them that the telephone call emanated from

the second floor.⁴ Mickulas also testified that his review of the case file revealed that the dispatcher, Rahman received a callback on the landline from the murder suspect and did not question him enough nor relay pertinent information to the Respondents and therefore, recommended a Command Discipline be issued to Rahman.

Mickulas further testified that even though there was no specific section of the Patrol Guide that the Respondent's violated, he believed their misconduct fell within the purview of the conduct prejudicial section in that they failed to investigate the call as completely as they could have. I disagree. While Mickulas had the full investigative file at his disposal to review, the Respondents only had limited information. They did not have the actual 911 call from the victim who, by all accounts sounded distressed. They did not have the information that the murder suspect called the dispatcher on the landline to report a past assault. They did, however, respond to the generic call of a 10-10 call for help and took action at the location. While Mickulas had the entire file to review, he never visited the location to observe for himself what the Respondents saw. He never made personal observations as to whether it appeared from the exterior of the house that one could gain access to the house from the structure that looked like a shed. He never made personal observations to determine whether access from the rear could lead to the second floor.

Respondent Terepka testified that the rear door to the house appeared to be a shed which did not give access to the house. This was corroborated by Competiello who visited the house and took pictures. He found the rear structure to look "a little strange" and he also described its appearance as a shed. He confirmed that access to the second floor could not be gained from the rear or through the first floor apartment.

⁴ It had already been established through the testimony of the Respondents as well as a review of the communications between the Respondents and the dispatcher that they knew the incident location was on the second floor.

The Respondents testified credibly and reasonably that they had no basis to take down a door without seeing or hearing any indication that a crime had or was taking place.

While Mickulas testified credibly in this matter, I do not believe that his testimony established by a preponderance of the credible evidence that the Respondents engaged in misconduct on August 14, 2005 by failing to conduct a complete investigation during their first response to the location. While Mickulas agreed that although "it would have been nice" if the 911 operator relayed in her message to the dispatcher that the caller seemed distressed, Mickulas did not believe the 911 operator had a duty to do that given the volume of telephone calls that 911 receives and that she properly designated the call as a 10-10 call for help and gave the location.

Police Communications Technician Rahman also testified. Although he stated that he repeatedly advised the Respondents that the 911 call came from the second floor apartment, a review of the 911 tape revealed that the word "apartment" was never used by Rahman. The Respondents acknowledged that they were aware that the call came from the second floor and that factored into their attempt to gain access to the building from the front of the house. Rahman added very little to the case and seemed to dispute his acceptance of the Command Discipline for not properly handling the landline call from the murder suspect.

Resseque, the patrol supervisor of the Respondents was called by them to testify. He testified credibly that in his 17-year career, seven years were as a patrol supervisor, he had never been called to the scene of a 10-10 call where the police officers were unable to gain entry. He testified credibly that he did not expect to be called to the scene of the first call. He testified that the proper procedure after receiving a 10-10 call was to respond to the location, knock on the door, ring the bell and ask for a call back to ascertain what is going on. Most importantly,

Resseque testified that based on the initial call for help and the Respondents' inability to gain entry, there was no basis to take down the door. Significantly he noted that it would not have changed anything even if he were called to the scene as a supervisor. The result would have been the same because he would have been confronted with the same facts as the Respondents. He further stated that he would not have likely gone to the back of the house to attempt to gain entry. This testimony is in stark contrast to Mickulas who speculated that by calling the patrol supervisor to the scene, the Respondents may have gained entry to the residence the first time.

There is no doubt that a terrible tragedy occurred. Several things contributed to this: the Respondents did not have all of the information such as the distress in the voice of the initial caller, the first floor tenants did not acknowledge the Respondents' presence and provide information, and the perpetrator of the crime was actively engaged in concealing his presence and that of the victim.


Given the information that they had and the circumstances that they faced, Respondents Hamilton and Terepka took reasonable and appropriate police action when they responded to the 10-10 call. Evidence adduced at trial and a review of the communications between Respondent Hamilton and the dispatcher (DX 1) established that they spent anywhere from seven to ten minutes at the location, requested a callback before finalizing the job as unable to gain entry. There is simply no showing that they could have done anything further at that time.

That they took appropriate action on the second call is unquestioned. Among other things they told the dispatcher to tell the caller that they needed access because they were unable to gain it the first time. When the murder suspect opened the door they quickly and properly assessed the situation, placed him under arrest, obtained a dying declaration from the victim,

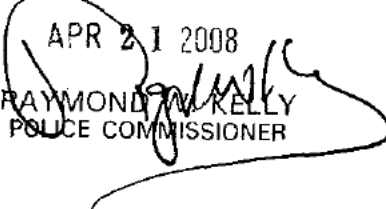
safeguarded the weapons and secured the crime scene. This was done despite the fact that this was the fifth 10-10 call that the Respondents received in that tour alone.

Based on the foregoing, I find Respondent Hamilton and Respondent Terepka committed no misconduct on August 14, 2005 and as such, are found Not Guilty as charged.

Respectfully submitted,


Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials

APPROVED

APR 21 2008

RAYMOND W. KELLY
POLICE COMMISSIONER